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Supreme Court of the United States

OCTOBER TERM, 1966

No. ~~832~~ 31

WYANDOTTE TRANSPORTATION COMPANY,
ET AL., PETITIONERS,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 7, 1966
CERTIORARI GRANTED FEBRUARY 13, 1967

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 838

WYANDOTTE TRANSPORTATION COMPANY,
ET AL., PETITIONERS,

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[fol. 1]

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION**

Admiralty No. 667

UNITED STATES OF AMERICA, Libelant,

v.

CARGILL, INC., CARGO CARRIERS, INC., INLAND RIVERS TRANSPORTATION Co., JEFFERSONVILLE BOAT AND MACHINE Co., CONTINENTAL INSURANCE Co., TRAVELERS INSURANCE Co., Respondents.

Admiralty No. 668

UNITED STATES OF AMERICA, Libelant,

v.

**2,220,000 Pounds Chlorine Cargo ex Barge WYCHEM 112
and Containers, in rem,**

and

UNION CARBIDE CORPORATION, WYANDOTTE TRANSPORTATION COMPANY, and UNION BARGE LINE CORP., in personam.

[fol. 2]

APPEARANCES:

Louis C. LaCour, Esq., United States Attorney.

Walter F. Gemeinhardt, Esq., First Assistant United States Attorney.

Martin Jacobs, Esq., Attorney, Department of Justice, Attorneys for United States of America—Libelant-Appellant.

Messrs. Taylor, Porter, Brooks, Fuller & Phillips (By Tom F. Phillips, Esq.), Louisiana National Bank Building, Baton Rouge, Louisiana.

Messrs. Phelps, Dunbar, Marks, Claverie & Sims (By J. Barbee Winston, Esq.), Hibernia Building, New Orleans, Louisiana, Attorneys for Cargill, Inc., Inland Rivers Transportation Co., Jeffersonville Boat & Machine Co., Continental Insurance Co., and Travelers Insurance Company.

Messrs. Jones, Walker, Waechter, Poitevent, Carrere and Denegre (By George Denegre, Esq., and Robert B. Acomb, Jr., Esq.), 225 Baronne Street, New Orleans, Louisiana, Attorneys for Union Carbide Corp.

Messrs. Terriberry, Rault, Carroll, Yancey & Farrell (By Alfred M. Farrell, Jr., Esq.), 825 Whitney Building, New Orleans 12, Louisiana.

Messrs. McCreary, Hinslea & Ray (By Lucian Y. Ray, Esq.), 860 Union Commerce Building, Cleveland 14, Ohio, Attorneys for Wyandotte Transportation Corp.

Messrs. Lemle & Kelleher (By George B. Matthews, Esq.), 1836 National Bank of Commerce Building, New Orleans, Louisiana, Attorneys for Union Barge Line Corp.

[fol. 3]

NUMBER 667

DOCKET ENTRIES

- 12/21/62 Filing Libel and Issuing Six Citations in Personam (12/26/62)
- 1/25/63 Flg. MR on citation served 1/3/63 on Cargill, Inc. through Lloyd Graving; 1/3/63 on Cargo Carriers, Inc. through John Wilder; 1/3/63 on Inland Rivers Transportation Co. through John Wilder.
- 1/29/63 Flg. MR's on two citations served 1/16/63 on Travelers Insurance Co. and Continental Insurance Co. through the Secretary of State.
- 1/31/63 Flg. MR on citation served 1/25/63 on Jeffersonville Boat & Machine Co., Jackson's Landing, La., through J. R. Nelson, Asst. Secty. of State.
- 2/15/63 Flg. motion of respondents for extension of time to plead and ORDER EGW GRANTING all respondents extension up to and including 3/24/63. Issuing notice 2/19/63
- Nov. 1, 1963 Issg. Notice of Calling of Docket Nov. 15, 1963
- 11/13/63 Flg. motion by defendants, Cargill, Inc., Cargo Carriers, Inc., Inland Rivers Transportation Co., Jeffersonville Boat & Machine Co., Continental Insurance Co., Travelers Insurance Co. for summary judgment and memorandum.
- 11/15/63 ENTG. CALLING OF DOCKET — CASE PASSED

12/13/63 Flg. motion by respondents to stay proceedings pending determination by the Supreme Court of the case entitled United States of America vs Bethlehem Steel Corp., et al or until further order and ORDER EGW GRANTING. Issuing notice 12/17/63

1/ 8/64 Entg. ORDER EGW—this case consolidated with Adm. No. 668. FURTHER ORDERED that the Government have until 1/17/64 to file briefs and all respondents have additional 10 days thereafter to file reply briefs. FURTHER ORDERED that on 1/28/64 all motions pending to be submitted. Issuing notice 1/16/64

6/30/64 Entg. ORDER EGW—respondents' motions for summary judgment GRANTED and reasons assigned. Issuing notice and entg. 7/1/64

6/30/64 Flg. JUDGMENT EGW in favor of all respondents, and against plaintiff, dismissing suit at plaintiff's cost. Entg. & issuing notice 7/1/64

CLOSED CASE

9/22/64 Flg. plaintiff's NOTICE OF APPEAL from the [fol. 5] final judgment entered on 6/30/64. Issuing notice 9/24/64

10/29/64 Flg. libelant's motion for extension of time for docketing appeal and ORDER EGW GRANTING extension to December 22, 1964. Issuing notice and entg.

12/15/64 Record Forwarded to Court of Appeal

NUMBER 668

DOCKET ENTRIES

- 1/ 3/63 Filing Libel and Issuing Two Citations in Rem and Two Admiralty Warrants.
- 1/ 4/63 Issuing Three Citations in Personam
- 1/11/63 Flg. MR on 3 citations served 1/3/63 on Containers ex Barge Wychem #112 through John M. Able, 1/3/63 on 2,200,000 lbs. chlorine cargo ex barge Wychem #112 through Pat M. Brady, Asst. Plant Mgr., Wyandotte Chemical Corp., and 1/4/63 Wyandotte Transportation Co. through Scott Starkey, Mgr. of Wyandotte Chemicals Corp., South western Dist., Baton Rouge, La.
- 1/16/63 Flg. motion of libelant to order sale of chlorine and containers and notice of hearing 1/16/63 [fol. 6]
- 1/15/63 Flg. statement of respondent, Union Carbide Corporation, relative to the motion of the United States, libelant, for the sale of chlorine and containers that said respondent has no opposition to the relief sought by libelant.
- 1/16/63 Flg. ORDER GRANTING motion of libelant to sell chlorine and containers.
- 1/16/63 Flg. entry of appearance of proctors for respondent, Wyandotte Transportation Company.
- 1/16/63 Flg. Minute Entry of hearing on motion of libelant to order sale of chlorine & containers—GRANTED. FURTHER ORDERED that sale of these goods be advertised in a Baton Rouge, La. newspaper on 1/21/63 and 1/25/63 and in a New Orleans, La. newspaper on 1/23/63 and 1/28/63, aforementioned sale to take place at

the entrance to the U. S. Courthouse (post-office), Baton Rouge, La. on 1/30/63. Issuing notice 1/17/63

1/16/63 Flg. MR on 2 citations served 1/14/63 on Union Barge Lines Corporation through Ronald Roush, Port Engineer; 1/14/63 on Union Carbide Corporation through C.T. Corporation.

1/21/63 [fol. 7] Flg. motion of defendant, Union Carbide Corporation, for extension of time to plead and ORDER EGW GRANTING an additional 60 days time up to and including 4/5/63. Issuing notice 1/21/63.

1/24/63 Flg. motion of respondent, Union Barge Line Corporation, for extension of time to plead and ORDER EGW granting extension including 4/1/63. Issuing notice 1/25/63

1/24/63 Flg. motion of respondent, Wyandotte Transportation Co., for extension of time to plead and ORDER EGW granting extension including 4/5/63. Issuing notice 1/25/63

2/ 7/63 Flg. motion of libelant to order negotiated sale of chlorine and containers and exhibit and notice of hearing 2/7/63

2/ 7/63 Flg. Minute Entry of hearing on motion of libelant to order negotiated sale of chlorine and containers. GRANTED. Issuing notice 2/8/63

2/ 7/63 Flg. ORDER for sale of chlorine and containers to Stauffer Chemical Co. at a price of \$85,000, representing \$25,000 for the chlorine and \$60,000 for the containers, f.o.b. purchaser's barge at Geismar, La., within 60 days after confirmation. Containers to be delivered f.o.b. government barges, Port Allen, La., with the

- [fol. 8] free use of the government barges until 7/5/63, to be returned by that date to Port Allen Locks. Terms: \$8,500 cash, certified check, or cashier's check drawn on a local bank, balance to be paid upon confirmation of sale and within ten days of execution of sale. Issuing notice 2/8/63
- 2/20/63 Flg. motion of libelant for discovery against respondent, Union Barge Lines, affidavit attached, and notice of hearing 3/1/63
- 2/20/63 Flg. motion of libelant for discovery by respondent, Wyandotte Transportation Co., affidavit attached, and notice of hearing 3/1/63
- 2/27/63 Flg. petition of United States Marshal for confirmation of sale and notice of hearing 3/1/63
- 3/ 1/63 Minute Entry of hearing on petition of U.S. Marshal for confirmation of sale. GRANTED. FURTHER ORDERED that motions of libelant for discovery be GRANTED with provisions. Issuing notice 3/6/63
- 3/ 1/63 Flg. ORDER OF CONFIRMATION OF SALE of chlorine and containers for \$85,000 to Stauffer Chemical Co. to be deposited in the Registry of the Court by the Marshal after subtracting his costs and commission, said sum to be invested by the Clerk of Court in One-Year Treasury Bills of the USA pending final disposition of this cause. Issuing notice 3/6/63
- [fol. 9]
- 3/ 5/63 Flg. executed contract of sale.
- 3/ 5/63 Flg. Marshal's bill of costs in the amount of \$1,371.28.
- 3/11/63 Flg. notice to take deposition, by plaintiff.

3/13/63 Flg. MR on deposition subpoenae served on John Doe, unknown officer of Union Barge Lines Corp.; through R. Roush on 3/11/63

3/21/63 Flg. MR's on Admiralty Warrant of seizure served on Pat W. Brady, Wyandotte Chemical Corp., Geismar Works; further executed by monition appearing in Baton Rouge Morning Advocate of 1/18/63, announcing seizure of chlorine. MR on Admiralty Warrant of seizure served 1/3/63 on John M. Able; further executed by monition appearing in Baton Rouge Morning Advocate of 1/18/63; announcing seizure of containers, ex Barge Wychem #112. MR on order granting libelant permission to sell chlorine and containers, executed by causing to appear in New Orleans States Item 1/23/63 and 1/28/63 and Baton Rouge Morning Advocate 1/21/63 and 1/25/63 Notice of Sale. Further executed by public auction on 1/30/63, no sale, and writ returned unsatisfied.

[fol. 10]

3/28/63 Flg. MR on deposition subpoena served 3/22/63 on William Charles Smith.

4/ 3/63 Entg. ORDER EGW—Order of Confirmation of Sale, dated 3/1/63, amended by striking out paragraph numbered "3". Issuing notice 4/3/63

4/ 1/63 Flg. motion of respondent, Union Barge Line Corporation, for extension of time within which to comply with libelant's request for discovery and ORDER EGW (4/2/63) GRANTING extension up to and including 5/1/63. Issuing notice 4/3/63

- 4/ 1/63 Flg. motion to dismiss and alternatively for summary judgment by respondent, Wyandotte Transportation Co., and briefs in support thereof.
- 4/ 1/63 Flg. motion of respondent, Union Barge Line Corporation, to vacate notice to take deposition and memorandum in support.
- 4/ 1/63 Flg. exceptions of respondent, Union Barge Line Corporation, and brief in support.
- 4/ 1/63 Flg. motion of respondent, Union Barge Line Corporation, for summary judgment and brief in support thereof.
- 4/ 2/63 Entg. ORDER EGW—all pending motions herein, including motion of respondent, Wyandotte Transportation Co. to dismiss and alternatively for summary judgment, motion of respondent, Union Barge Line Corporation, to vacate notice to take deposition, exceptions of respondent, Union Barge Line Corporation, and motion of respondent, Union Barge Line Corporation, for summary judgment, set for HEARING 5/3/63. Issuing notice 4/3/63
- [fol. 11]
- 4/ 4/63 Flg. exceptions of respondent, Union Carbide Corp., and alternatively, motion to dismiss, memorandum. HEARING 5/3/63
- 4/ 4/63 Flg. motion of respondent, Union Carbide Corporation, for summary judgment and memorandum. HEARING 5/3/63
- 4/17/63 Entg. ORDER EGW—hearing on motions previously scheduled for 5/3/63 CONTINUED SUBJECT TO REASSIGNMENT. Issuing notice 4/18/63

8

- 4/29/63 Flg. motion of respondent, Union Barge Line Corp., for extension of time to reply to libelant's request for discovery and ORDER EGW (sgd. 5/2/63) Granting extension up to and including 6/1/63. Issuing notice 5/2/63
- 5/28/63 Flg. motion by respondent, Union Barge Line Corp. for extension of time and ORDER EGW that the time within which Union Barge Line Corp. is required to respond to the motion for production of documents by libelant is extended to 7/1/63. Issuing notice 5/29/63
- [fol. 12]
- 6/19/63 Flg. response by respondent, Union Barge Line Corp., to notice to admit filed by libelant.
- 6/21/63 Flg. reply by respondent, Union Carbide Corp. to request to admit.
- 6/17/63 Flg. stipulation that libelant shall have until 7/1/63 to file answering affidavits and brief in opposition to respondents exceptions, motions to dismiss, and motions for summary judgment. Respondents to have until 8/15/63 to file reply briefs.
- 7/ 1/63 Flg. admission of genuiness (sic) by respondent, Wyandotte Transportation Co.
- 7/ 9/63 Flg. motion by libelant for extension of time to file briefs.
- 7/ 9/63 Flg. stipulation between all parties that libelant shall have until 7/15/63 to file answering affidavits and briefs in opposition to respondents' exceptions, motions to dismiss and motions for summary judgment. Respondents to have until 9/6/63 to file reply briefs.

7/ 9/63 Flg. motion by libelant to continue hearing on motions of respondents for summary judgment until libelant is able to take depositions and [fol. 13] have discovery, memorandum, affidavit, and exhibits attached.

7/15/63 Flg. affidavits and exhibits of libelant in answer to motions for summary judgment.

7/16/63 Flg. motion by libelant for leave to amend libel to add Wyandotte Chemical Corp. as an additional party respondent and notice of hearing to be set by the Court.

7/31/63 Entg. ORDER EGW—all pending motions herein to be heard 10/28/63. Issuing notice 8/2/63

7/30/63 Flg. motion by all respondents for extension of time to file briefs and ORDER EGW GRANTING extension to 9/20/63. Issuing notice 7/30/63.

9/23/63 Flg. affidavit by George Denegre, attorney for respondent Union Carbide Corp., verifying copy of Bill of Lading.

10/23/63 Entg. ORDER EGW—hearing set for 10/28/63 CONTINUED TO BE RE-ASSIGNED. FURTHER ORDERED that all proceedings be STAYED pending the determination by the U. S. Supreme Court in USA vs Bethlehem Steel Corp., et al. Issuing notice 10/24/63

1/ 8/64 Entg. ORDER EGW—this case consolidated with Adm. No. 667. FURTHER ORDERED that the Government have until 1/17/64 to file [fol. 14] brief and all respondents have additional 10 days thereafter to file reply briefs. FURTHER ORDERED that on 1/28/64 all motions pending be SUBMITTED. Issuing notice 1/16/64

- 6/30/64 Entg. ORDER EGW—respondents' motions for summary judgment GRANTED and written reasons assigned. Issuing notice and entg. 7/1/64.
- 6/30/64 Flg. JUDGMENT EGW in favor of all respondents against plaintiff, dismissing suit at plaintiff's cost. Entg. & issuing notice 7/1/64

CLOSED CASE

- 9/22/64 Flg. plaintiff's NOTICE OF APPEAL from the final judgment entered on 6/30/64. Issuing notice 9/24/64
- 10/29/64 Flg. libelant's motion for extension of time for docketing appeal and ORDER EGW that extension be GRANTED to December 22, 1964. Issuing notice and entg. 11/2/64
- 12/15/64 Forwarding Record to Court of Appeals, Fifth Circuit

[fol. 15]

IN UNITED STATES DISTRICT COURT

Number 667

LIBEL AND COMPLAINT FOR A DECLARATORY JUDGMENT UNDER SUPREME ADMIRALTY RULE 59—Filed: December 21, 1962

The libel and complaint of the United States of America for a declaratory judgment under Supreme Court Admiralty Rule 59 in an action civil and maritime alleges upon information and belief as follows:

First: Libelant, the United States of America is a sovereign nation entitled to commence this action pursuant to the provisions of Title 28, United States Code, Section 1345, under which statute this Honorable Court is granted original jurisdiction of this cause of action, brought pursuant to the request of the U. S. District Engineer.

Second: This action arises under the provisions of Title 28, United States Code, Sections 2201 and 2202, and is proceeded with as provided in Rule 59 of the Supreme Court Admiralty Rules.

Third: Respondent, Cargill, Inc., is a corporation organized and existing under the laws of the State of Delaware with an office and place of business in this district at Jackson's Landing.

Fourth: Respondent, Cargo Carriers, Incorporated, is a corporation organized and existing under the laws of the State of Delaware with an office and place of business in [fol. 16] this district at Jackson's Landing.

Fifth: Respondent, Inland Rivers Transportation Company, is a corporation organized and existing under the laws of the State of Delaware with an office and place of business in this district at Jackson's Landing.

Sixth: Respondent, Jeffersonville Boat and Machine Company is a corporation organized and existing under the laws of the State of Delaware with an office and place of business in this district at Jackson's Landing.

Seyenth: Respondent, Continental Insurance Company is a corporation organized and existing under the laws of the State of New York, which is doing business within this district and subject to service as a foreign corporation.

Eighth: Respondent, Travelers Insurance Company is a corporation organized and existing under the laws of the State of Connecticut, which is doing business within this district and subject to service as a foreign corporation.

Ninth: The actual controversy between the parties concerns the ownership of and liability for two barges, the Barge L 1, owned by Cargo Carriers, Inc., and the Barge M 65, owned by Jeffersonville Boat and Machine Corp. The other parties are managers and charterers of the barges, and the marine underwriters, protection and indemnity and hull on the barges.

Tenth: The two barges M 65 and L 1, each 195 feet [fol. 17] by 35 feet by 12 feet, were moored by a tug, time-chartered to Cargo Carriers, Inc. at the Cargill fleet mooring at Jackson's Landing, also called Red Dog Landing, Mile 227.5 above Head of Passes, Baton Rouge, Louisiana, on March 30, 1961.

Eleventh: About 3:32 A.M., on March 31, 1961, the supertanker ESSO ZURICH, 625 feet long, 82.7 feet beam, 42.7 feet depth, 17,943 gross tons, bound upriver for Baton Rouge, in good visibility with shore lights clear ahead and astern, collided with and sank near Arlington Light, mile 224.1 Above Head of Passes, an unmanned and unlighted barge, which had been drifting in the channel. The pilot reported the incident on the voice radio to the barge fleet at Baton Rouge. Apparently two barges were missing, the L 1 and M 65. The bow lookout on the ESSO ZURICH had seen two unlighted barges, only one of which was hit.

Twelfth: On March 31, 1961, at 1:24 P.M., CST, Cargo Carriers, Inc. wired the District Engineer as follows:

This is to notify you that our barges L 1 and M 65 were sunk on March 31 at approximately Mile 223. Red Eye Crossing AHP Approximately 100 yard east of center of channel. L 1 has about 20 feet of port [fol. 18] forward corner extending above water.

At 3:07 P.M. on the same day the District Engineer replied, referring to the message and stating:

Advise your intentions as to disposition. Your responsibility to mark for day and night navigation.

Thirteenth: On April 2, 1961, Cargo Carriers, Inc. wired the District Engineer that the barges had been marked with three green oil drums welded together with five lanterns welded to the top, and that no salvage attempt would be made prior to April 3, a Monday.

Fourteenth: By a wire sent 1:56 P.M., CST, April 9, 1962, Inland Rivers Transportation Co. Minneapolis, to District Engineer, New Orleans stated:

We hereby abandon our barge designated as the L 1 Steel. Jumbo Barge 195 by 35 which sank on or about March 31, 1961 at about Mile 223.2 Mississippi River. Please acknowledge.

By wire sent 2:01 P.M., CST, April 9, 1962, Cargo Carriers, Incorporated, Minneapolis, to the District Engineer, stated:

We hereby abandon our barge designated as the M 65 Steel Jumbo Box Barge 195 by 35 which sank on or about March 31, 1961 at about Mile 223.2 Mississippi River. Please acknowledge.

[fol. 19] These wires of April 9, 1962 were followed by letters dated April 10, received April 13, 1962, which stated:

We do hereby declare our intention to abandon this vessel to the United States under provisions of Section 8 of the Rivers and Harbors Act.

Fifteenth: By a wire dated April 10, 1962, to Cargo Carriers, Inc. (similar wire to Inland Rivers Transportation Co.) the District Engineer replied:

Reurtel 9 April 1962. Government refuses acceptance abandonment your barge M 65 per discretion 33 USCA 414. Your responsibility to mark and light or remove. Letter follows.

Copy of the letter dated 12 April 1962 to Cargo Carriers, Inc. (similar letter to Inland Rivers Transportation Co.) is annexed as Exhibit A.

Sixteenth: Thereafter, on April 20, 1962, Inland Rivers Transportation Co., Cargill, Inc. and Cargo Carriers, Inc. at Baton Rouge, wired the District Engineer that;

Inasmuch as it is our position that tender of abandonment to you of said barges has been effected please advise that you accept abandonment and as the owner thereof, will provide such buoying and lights as you [fol. 20] deem necessary or desirable.

On the same day the District Engineer replied:

Reurtel 20 April 1962, Government reiterates refusal to accept abandonment or any responsibility for marking and lighting Barge L 1. You are advised to mark and light Barge L 1 pending your removal of same from navigable waters of United States . . .

Seventeenth: The dispute continued until a wire from Inland Rivers Transportation Co. to the District Engineer, dated April 26, 1962, was referred to the Department of Justice for litigation. This wire, prepared by counsel for Continental Insurance Co. stated:

We reiterate it is our position we no longer have any right title or interest in or to the said barges or the wrecks thereof such having been abandoned to you. It is further our position that it is your obligation if any there is to mark and light the vessels or the wrecks thereof and that any loss damage or injury caused by incidental to or connected with the vessels or wrecks thereof is your responsibility.

Eighteenth: Only one barge was located, which is believed to be the wreck of the L 1, which shows marks of a [fol. 21] collision, and is located in the Mississippi River at Red Eye Crossing, outside the sailing line, just below the surface between Dailey Chapel, East Baton Rouge Parish, and Lukeville, West Baton Rouge Parish, near the power line crossing, within this district.

Nineteenth: Respondent, Continental Insurance Company covered these barges under a standard type Inland

Vessels Protection and Indemnity form, which included, among others, coverage for:

Any attempted or actual raising, removal or destruction of the wreck of the insured vessel or the cargo thereof, or any neglect or failure to raise, remove or destroy the same.

Libelant seeks to enforce this coverage pursuant to the Louisiana District Action Statute, La. Rev. Stat. 1950, 22:655, as amended.

Twentieth: The aforesaid collision and wreck was not caused or contributed to by the fault or neglect of libelant or any person for whom libelant is responsible but was solely caused by the fault and neglect of respondents in the following respects, among others which will be shown at the trial.

1. The barges were unseaworthy.
2. The barges did not have proper lights or proper [fol. 22] standards on which to erect lights.
3. The barges did not have adequate mooring lines.
4. No watchmen were stationed to inspect the barges or their moorings.
5. The barges were negligently moored, negligently attended and permitted to break loose and drift down the river, unlighted and a menace to navigation.

Twenty-first: All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, Libelant prays:

1. That process in due form of law issue against respondents, citing them to appear and answer the allegations of this libel.
2. That the court will be pleased to decree that the responsibility and liability of marking and removing the

wrecks remains with the respondents and cannot be shifted by them to the Government by virtue of Section 8, or any other section of the Rivers and Harbors Act.

3. That the court will be pleased to decree that the respondent underwriters are under their insurance policies, obligated to remove said wrecks, and,

4. That the court will grant such other relief as the [fol. 23] justice of the cause may require.

Louis C. LaCour, United States Attorney.

Thomas F. McGovern, Attorney, Admiralty & Shipping Section, Department of Justice, Washington 25, D.C.

EXHIBIT A TO LIBEL AND COMPLAINT

12 April 1962

LMNVE

Cargo Carriers, Inc.

200 Grain Exchange Building

Minneapolis 15, Minnesota

Gentlemen:

This letter will confirm telegram of 11 April wherein the United States declined to accept abandonment of your Barge M-65 which sank on or about 31 March 1961 in the Mississippi River, vicinity of Mile 223.2 Above Head of Passes.

Our files reflect that subsequent to the sinking, your insurance underwriters assumed responsibility for this barge, had the same marked and lighted, and proposed to have it raised and removed from the river. Under these circumstances, it is doubtful whether you have the right to abandon this barge, especially since it seems highly possible that your underwriters stand to lose a considerable amount of money as a result of the collision (sic) with [fol. 23a] the Esso ZURICH.

It is also our understanding that the Barge M-65 was libeled in Admiralty Case No. 5010 brought by Humble Oil in the United States District Court for the Eastern District of Louisiana, and will be involved in the Limitation of Liability proceeding filed by the M/V ISABEL S. GARRETT in the United States District Court for the Southern District of Texas, Houston Division.

A review of the pleadings filed in the suit brought by Humble reflects that the Barges L-1 and M-65 were negligently moored at Jackson Landing in Baton Rouge, Louisiana, by the M/V ISABEL S. GARRETT; were negligently permitted to get loose and float several miles without the knowledge of anyone; were negligently floating loose in the Mississippi River, unnavigated, unguided and without proper lights; and that both barges sank after colliding with the Esso ZURICH as a direct and proximate result of this negligence.

It is also noted that the M/V ISABEL S. GARRETT's owners, Bell Marine Service, charge that the Barges L-1 and M-65, the M/V ISABEL S. GARRETT, and the operation of the Jackson Landing were all under the supervision and control of Cargo Carriers, Inc. It is also noted that although you advised the Government in its letter of 14 April 1961 that Inland Rivers Transportation Company [fol. 23b] and Jeffersonville Boat and Machine Company were the owners of the Barge L-1 and the Barge M-65, respectively, the telegram giving notice of abandonment of both barges came from your offices in Minneapolis, Minnesota, rather than the offices of the two above-named companies in Chicago, Illinois, and Jeffersonville, Indiana.

The primary responsibility for marking and lighting and for removal of a sunken vessel is placed upon the owner thereof by virtue (sic) of the provisions of 33 U.S.C.A. 409 and related articles, and acceptance of this responsibility by the United States is discretionary rather than mandatory by reason of the provisions of 33 U.S.C.A. 414. In view of the fact that the Barge M-65 was sunk

as a result of the negligence of her owners and/or operators; is presently libeled by the owner of a vessel to which she caused damage; and is most probably owned or subject to salvage and/or subrogation claims by her insurance underwriters, the United States Government refuses to accept abandonment of the Barge M-65 and assumes no responsibility for removal of said barge or for marking and lighting pending removal. This office will, however, record and preserve your notice of abandonment for whatever purpose it may serve in the future.

Sincerely yours,

[fbl. 23c]

EDWARD B. JENNINGS
Colonel, CE
District Engineer

cc: Jeffersonville Boat & Machine
Co., Jeffersonville, Ind.

Commandant, 8th US Coast
Guard Dist, N.O., La.

Channel Patrol Sec. Oprns

IN UNITED STATES DISTRICT COURT

No. 668

LIBEL—Filed January 3, 1963

To the Honorable, the Judge of Said Court:

Comes now the United States of America by Louis C. LaCour, United States Attorney for the Eastern District of Louisiana, on direction of the Attorney General, and brings this libel against 2,220,000 pounds of chlorine cargo ex-Barge WYCHEM 112 and containers, *in rem*; and against Union Carbide Corporation, Wyandotte Transportation Company, and Union Barge Line Corp., respondents, *in personam*, in a cause civil and maritime of

nuisance, tort and salvage, and respectfully alleges upon information and belief as follows:

First: The United States of America is a sovereign which maintains, protects, and conserves the Mississippi River as a great national highway, the free navigation of [fol. 24] which is paramount as a great navigable channel of travel and of commerce; which by statute, 33 U.S.C. 10, is required to be and forever remain a public highway.

The national character and essential federal interest in this national artery of commerce was confirmed by reservations in the acts admitting the new states on this river, by the Louisiana Purchase, and by two wars; and from the earliest days Congress has continually appropriated funds for the improvement of navigation on this river and has appointed federal commissions to correct, permanently locate and deepen the channel and protect the banks of the Mississippi, to improve navigation, and to prevent destructive floods, and to promote and facilitate commerce, trade and postal service. The exact amount of federal property on the banks and levees in articulated mats, revetments, dikes, works, structures buoys, beacons, lights, landings, vessels, on the part of the river within thirty miles of this chlorine and downriver from its then location is incalculable but substantial in nature. In addition to its property interests, libelant as parens patriae and acting for the public health and welfare, has an interest in protecting its citizens, navigating and residing on and along the banks of said river, whether afloat or ashore, against death and injury by noxious and poisonous gases, which have been [fol. 25] deposited into the navigable channel of the river.

Second: The chlorine cargo ex-Barge WYCHEM 112 is presently in safe storage at the Wyandotte Chemicals Corp. Geismar Works at Ascension parish, Louisiana, within this district. The containers are presently stored at Port Allen, Louisiana, within this district.

Third: The said cargo of liquid chlorine belonged at the time of its loss and subsequently, to Union Carbide Cor-

poration, organized under the laws of the State of New York, and doing business within this district, with offices at 4833 Conti Street, New Orleans, Louisiana.

Fourth: The containers for the cargo are owned by Wyandotte Transportation Company, a wholly owned subsidiary of Wyandotte Chemicals Corp., organized under the laws of the State of Michigan, and doing business within this district with offices at 244 Peachtree Boulevard, Baton Rouge, Louisiana.

Fifth: The Union Barge Lines, Corp., organized under the laws of the State of Pennsylvania, and doing business within this district with offices at the Commerce Building, New Orleans, Louisiana, was the owner and operator of the towboat Eastern, official #271680, 155 feet long, 36 feet wide, 3,530 horsepower, 743 gross tons, built in 1956, which vessel was the towboat in charge of the Barge WYCHEM 112 when the barge sank.

[fol. 26] Sixth: The Barge WYCHEM 112 was a new barge on her maiden voyage. Built by Avondale Shipyard expressly for use as a liquid chlorine barge for Wyandotte Transportation Company, it was an open hopper type barge with rake ends, a low hatch coaming, a low deck housing in the middle, and inside the barge was all one big open hatch not compartmented. Four huge chlorine gas cylinders, each 75 feet long and 11 1/2 feet in diameter, were tiered two abreast inside the open hatch and were designed to be filled with liquid chlorine under pressure. The barge was unmanned and undecked and had no pumps or suction aboard to pump out the water which came into the open box.

On March 15-17, 1961, the tanks were filled with 555,000 pounds of chlorine gas each, at the Geismar Works of Wyandotte Chemicals Corp., and the Barge WYCHEM 112, owned by Wyandotte Transportation Company, a wholly owned subsidiary of Wyandotte Chemicals Corp. was taken in tow on March 21, 1961 by the towboat *East-*

ern, which was owned and operated by Union Barge Line Corp., under a contract of towage to deliver to Union Carbide Corporation at South Charleston, West Virginia. Whether the contract of towage was between Union Barge and Union Carbide, or between Union Barge and Wyandotte, libelant does not yet know, but was advised by Wyandotte that the cargo was owned by Union Carbide at the time of the loss.

[fol. 27] Seventh: The narrative of the pertinent facts as presently known to libelant is that during the first part of the tow, from Geismar, Louisiana, to Baton Rouge, Louisiana, the Barge WYCHEM 112 was in the fourth and last tier of the four tiers of barges of the tow, which was arranged five abreast in the first tier, four abreast in the second tier, four abreast in the third tier, and three abreast of the fourth tier, with the towboat *Eastern* pushing the middle one of the fourth tier. This arrangement kept the chlorine barge with its dangerous cargo near to and under easy observation from the towboat. About Baton Rouge, those in charge of the towboat *Eastern* rearranged the tow and placed the Barge WYCHEM 112 with its dangerous cargo in the first and foremost tier, being the lead barge on the port of left-hand side. This separated the barge with its dangerous cargo away from the towboat, but also moved it away from direct observation of the towboat's pilothouse and out where it would bear the brunt of the weather. Around 6:45 a.m., EST, on March 23, 1961, with weather and visibility good but with a strong current, the Barge WYCHEM 112 began to dive, putting her bow down and raising her stern up. The barge sank near Vidalia, Louisiana, at mile 353, above head of passes, Mississippi River. The sinking did not involve a collision, act of God, peril of the sea, storm, or any unusual weather and the [fol. 28] facts themselves speak of negligence by one or more of the respondents. The divers sent down as part of the recovery operation found the forward manhole cover not dogged down.

Eighth: After the sinking, the narrative facts were that the owners and operators of the barge and their underwriters made some effort in the fall of 1961 to locate and raise this inherently dangerous cargo and were assisted by the Navy, which flew electronic equipment over, by the Engineers who used sounding devices, and by a private firm using a magnetometer floated in a submarine. The magnetometer located two objects, either of which could have been the wreck, both under hard packed sand, and in November 1961, the Wyandotte Company notified the Engineers that further efforts to locate and salvage the wreck would be unsuccessful.

Thereafter the extent and potential danger of this chlorine to the people, animals and river property in that area received technical study from the Government and from representatives of the Chlorine Institute and from the Wyandotte Company, which have at all times cooperated and assisted in the chemical hazard side of the problem. No one knew which wreck had the chlorine; no one knew how long the tanks or gaskets and fittings would take to corrode through under the mud; and there was a division [fol. 29] of expert opinion on whether the mud cap would contain any small leak around the metal, transforming the chlorine into hydrochloric acid and thereby enlarging the hole.

After extensive discussions, the Chlorine Institute met with the Coast Guard, Public Health Service and Corps of Engineers at Washington on July 10, 1962, and issued opinions and recommendations dedicated solely to the technical question involved. Among those technical opinions were that the likely places to leak were at the safety valve from the outside, and at the bolts and gaskets of the angle valves or of the safety valves; that if a leak did start it would not long remain a small one because of the corrosive effect; that if a leak did start chlorine gas would come to the river surface and enter the atmosphere; that there is no way to know when a leak will occur—might be from

two to ten years—but so long as the barge remained on the bottom it was a potential hazard; and recommended among others that the barge, or the individual tanks of the barge, should be raised as soon as practical under controlled conditions; that the Government should do it and that the Institute would assist technically but not as to the salvage part of the work. At a further meeting on August 7, 1962, there was a dispute as to whether the legal responsibility [fol. 30] to act was with the Wyandotte Chemicals Corp. or with the Government, which was unresolved. A demand to remove was rejected by Wyandotte.

After mature consideration the Public Health Service advised the Office of Emergency Planning that in its opinion the chlorine constituted a hazard to public health and safety. On September 6, 1962 the Office of Emergency Planning convened a meeting in Washington of the interested Federal Agencies and on September 11, 1962, convened a meeting with public and private interests at Vicksburg, Mississippi. The Vicksburg meeting concluded with the Government promised the help of Wyandotte Chemicals Corp. and the Chlorine Institute. By this time the public health problem had been appraised as involving possible casualties of 40,000 to 50,000 people with 10,000 to 25,000 fatalities; and the casualty was proclaimed a major disaster under 42 U.S.C. 1855, 1855a-g, by the President on October 10, 1962 for Mississippi and November 5, 1962 for Louisiana, and by the Governor of Mississippi on October 11, 1962.

Ninth: The wreck was located; the tanks were removed with extreme care against any puncture and with a mobilization of the civil defense, public health and state authorities under the Disaster Relief Act, Public Law 875, 81st Cong.; 42 U.S.C. 1855, 1855a-g, during the period October [fol. 31] 24, 26, November 2, 5, 1962, and the last tank was delivered to the Geismar plant of Wyandotte on November 13, 1962, and purged on December 2, 1962.

Tenth: Said Union Carbide Corporation collected the value of its cargo from its cargo underwriters, who refused

to accept the abandonment of the cargo, and accordingly left Union Carbide Corporation with unimpaired legal title to this liquid chlorine.

Eleventh: Libelant is not presently advised as to the exact relationship between the shippers (Wyandotte Chemicals Corp.); the carriers (Wyandotte Transportation Company and Union Barge Lines, Corp.); and the consignee (Union Carbide Corporation), but attempted to keep all interests informed and on notice as to the nuisance abatement by a wire of 16 October 1962, to the General Counsel of Union Carbide Corporation, repeated to their underwriters, which wire was in turn sent to Wyandotte Chemicals Corp. by letter of 23 October 1962.

Twelfth: Each tank of chlorine contained 275 tons; more chlorine than the Germans used in their first gas attack at Ypres in April 1915 when 168 tons caused 15,000 casualties and 5,000 deaths and a single small leak in the fittings or gaskets could rapidly corrode and cascade into an imminent peril, all constituting an inherently dangerous substance and a nuisance per se, which when not removed by its [fol. 32] owners, demanded prompt removal by libelant as a public authority and conservator of the Mississippi River and as the only governmental organization capable of so large and federal a project, thus giving rise to a lien against any property of value annexed to the nuisance and to a charge and claim for reimbursement against those responsible for leaving such an inherently dangerous substance in the public highway.

Thirteenth: The aforesaid loss was not occasioned by the fault or neglect on the part of the libelant, United States of America, but was solely caused by the fault and neglect of respondents, in the following respects, among others, which will be shown at the trial of this case:

1. The Barge WYCHEM 112 was unseaworthy.
2. The Barge WYCHEM 112 was improperly designed.

3. In view of the dangerous cargo for which the Barge WYCHEM 112 was designed, she was not equipped with a deck which would have prevented her from sinking whenever water came over her bow.
4. The chlorine tanks were not designed with adequate protection against injury by collision and sinking and were not protected by adequate collision and leakage bulkheads.
5. The Barge was not manned by a watchman or by [fol. 33] other person to protect her against the ordinary perils of the river.
6. Those in charge of the Barge did not take frequent soundings by lead line or pole to determine if she was shipping water.
7. Those in charge of the Barge did not make frequent inspections to determine her condition.
8. Those in charge of the Barge failed to maintain an adequate and vigilant lookout.
9. There was no lookout on the bow of the tow.
10. Those in charge of the Barge were not warned of her inherently dangerous condition and that they should take special care of her as if she were an explosive barge.
11. The Barge did not have its hatch cover fastened when delivered at the dock to the towboat on its maiden voyage.
12. The Barge did not have its hatch cover fastened when moved to the head or weather side of the tow.
13. The open barge was moved from a position of safety to a position of danger as the lead port barge in the tow.
14. The Barge was not equipped with pumps or siphons to handle the water which would come over the open hatch.

[fol. 34] 15. In view of the known deadly and dangerous nature of her cargo, the Barge was loaded with and was permitted to carry an excessive amount of chlorine exposed to a single hazard.

- ♦ 16. The said chlorine cargo in the position where it was left constituted a nuisance per se and a continuing danger to those navigating the river, to those living near the river, and to all their livestock and other property, which would have been destroyed by the chlorine gas which would have escaped in the fullness of time.

Fourteenth: The damages and expenses of libellant in abating this nuisance and in salvaging this inherently dangerous cargo amount to approximately \$3,081,000.00 as nearly as may presently be estimated. Of this amount approximately \$1,565,000.00 was engineering expense, and \$1,516,000 public health and safety expense, including necessary precautions against a possible rupture during the salvage operations; no part of which has been paid although duly demanded.

Fifteenth: All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libellant prays:

- (1) That process in due form of law according to the practice of this Honorable Court in causes of admiralty and maritime jurisdiction may issue in rem against the said cargo and containers and in personam against the said Union Carbide Corporation, Wyandotte Transportation Company, and Union Barge Lines, Corp., citing them and each of them to appear and answer all and singular the allegations herein;
- (2) That the Court may be pleased to declare and decree that libellant is entitled to its damages as proceeded on;

- (3) That the Court condemn the said cargo of chlorine with its tanks to be sold for such damages and the costs of this action;
- (4) That the Court condemn respondents for such damages and costs, or such of them as the Court may find liable;
- (5) That the Court order an account taken of such damages by a commissioner; and
- (6) That libelant have such other relief as the nature of the case may require.

Louis C. LaCour, United States Attorney.

Duly sworn to by Thomas F. McGovern, jurat omitted in printing.

[fol. 36]

IN UNITED STATES DISTRICT COURT

No. 668

MOTION OF LIBELANT TO ORDER SALE OF CHLORINE AND
CONTAINERS—Filed January 16, 1963

Comes now the libelant the United States of America and moves this Honorable Court as follows:

First: On January 3, 1963, the Marshal of this Court seized the chlorine and its containers libeled in the above [fol. 37] case. At present the chlorine is being stored in the Geismar Works of the Wyandotte Chemical Corporation at a cost of \$55.50 per day. The containers are being stored separately by the United States Army Corps of Engineers at Port Allen Locks at great inconvenience and at considerable cost to the Corps of Engineers.

Second: The retail value of the chlorine is approximately \$60.00 per ton or a total of \$66,600.00. At auction the chlorine should bring a price of at least \$30,000.00. The replacement cost of all four containers is approximately \$100,000.00. They should bring at least \$80,000.00 at auction.

Wherefore, libelant prays that in order to save storage charges this Honorable Court order as follows:

1. The Marshal shall sell the chlorine separately on ten days' advertisement at an upset price with appraisal of \$30,000.00 f.o.b. purchaser's barge, Geismar, Louisiana.
2. The Marshal shall sell the containers separately on ten days' advertisement at an upset price with appraisal of \$80,000.00 f.o.b. government barges, Port Allen Locks, Louisiana.
3. The Marshal shall return the proceeds less expenses of the sale of the chlorine and its containers and shall [fol. 38] deposit the same in the Registry of the Court.
4. The sale of the chlorine and its containers shall in no way prejudice the legal position of the parties to this litigation.

Louis C. LaCour, United States Attorney, Proctor
for United States.

Bardyl R. Tirana, Attorney, Admiralty and Shipping
Section, Department of Justice, Washington 25, D.C., Of
Counsel.

IN UNITED STATES DISTRICT COURT

Number 668

STATEMENT OF RESPONDENT UNION CARBIDE CORP. RELATIVE
TO LIBELANT'S MOTION FOR SALE—Filed January 15, 1963

To the Honorable, the Judges of the United States District Court for the Eastern District of Louisiana, Baton Rouge Division:

Now Into Court comes Union Carbide Corporation, named Respondent, appearing herein solely and for the limited purpose of stating its position relative to the Motion of the United States of America, Libelant, for the

sale of a cargo of chlorine now under seizure and states that Union Carbide Corporation makes no claim to the cargo of chlorine and, accordingly, has no opposition to the relief sought by said Libellant.

[fol. 39]

Jones, Walker, Waechter, Poitevent, Carrere & Denegre, By George Denegre, Robert B. Acomb, Jr., 1547 National Bank of Commerce Building, New Orleans 12, Louisiana, Proctors for Respondent, Union Carbide Corporation.

IN UNITED STATES DISTRICT COURT

Number 668

ORDER OF CONFIRMATION OF SALE—March 1, 1963

On the 1st day of March, 1963, came on before the Court the petition of the United States Marshal that the Court confirm the sale of the chlorine and containers ex Barge WYCHEM 112. After due consideration, it appears to this Court that the granting of the foregoing petition will be for the best interest of all concerned; it is therefore:

Ordered, Adjudged and Decreed by the Court that:

1. The sale of the chlorine and containers ex Barge WYCHEM to the Stauffer Chemical Company for the sum of \$85,000.00 be confirmed.
2. The United States Marshal shall take his costs and commission from the proceeds of the sale and shall [fol. 40] pay the balance into the Registry of the Court.
3. The Clerk of the Court, in order to prevent the proceeds from lying idle pending final disposition of this case, shall invest the proceeds in One-Year Treasury Bills of the United States of America.

Rendered and entered at Baton Rouge, Louisiana, this 1st day of March, 1963.

E. Gordon West, United States District Judge.

IN UNITED STATES DISTRICT COURT

Number 668

ORDER AMENDING ORDER OF MARCH 1, 1963—

Dated April 3, 1963

It appearing to the Court that numbered paragraph "3" contained in the Order of Confirmation of Sale, dated March 1, 1963, and providing for the investment of the proceeds of the sale, is not in accordance with established procedures heretofore used in connection with moneys deposited in the Registry of the Court,

It Is Ordered that the said Order of Confirmation of Sale, dated March 1, 1963, be, and the same is hereby, amended striking out said numbered paragraph "3".

Baton Rouge, Louisiana, April 3, 1963.

[fol. 41] E. Gordon West, United States District Judge.

IN UNITED STATES DISTRICT COURT

Number 668

MOTION OF WYANDOTTE TRANSPORTATION COMPANY TO DISMISS AND ALTERNATIVE MOTION FOR SUMMARY JUDGMENT
—Filed April 1, 1963

To the Honorable, the Judges of said Court:

Comes now, Wyandotte Transportation Company, one of the Respondents, and respectfully moves the Court for an order dismissing the libel herein on the ground that it does not state any cause of action upon which a judgment against said Respondent can be based, or, in the alternative, that it enter, pursuant to Rule 58(b) of the Supreme Court Admiralty Rules, a summary judgment in this Respondent's favor, dismissing the action on the ground that there is no genuine issue as to any material fact and that this Respondent is entitled to a judgment as a matter of law:

The motion to dismiss is based upon the libel herein attached hereto as Exhibit A.

The alternative motion for a summary judgment is based upon:

1. The libel herein, attached hereto as Exhibit A.

[fol. 42] 2. The affidavit of William R. Day, Secretary and Legal Director, Wyandotte Transportation Company, attached hereto as Exhibit B.

3. Letter of November 14, 1961 from L. A. Thompson, Fleet Engineer, Wyandotte Transportation Company to Col. James E. Welch, District Engineer, U. S. Corps of Engineers, Vicksburg District, attached hereto as Exhibit C.

4. Letter of September 25, 1962, from Col. Warren S. Everett, District Engineer, U. S. Corps of Engineers, Vicksburg District to Wyandotte Transportation Company, attached hereto as Exhibit D.

McCreary, Hinslea & Ray, 860 Union Commerce Bldg., Cleveland 14, Ohio, By Lucian Y. Ray and Terriberry, Rault, Carroll Yancey & Farrell, Whitney Bank Building, New Orleans 12, Louisiana, By Alfred M. Farrell, Jr., Proctors for Respondent, Wyandotte Transportation Company.

(EXHIBIT A: Libel in Admiralty Number 668. Copied herein on pages 20 to 29.)

[fol. 43]

EXHIBIT B TO MOTION

STATE OF MICHIGAN,
COUNTY OF WAYNE, ss:

AFFIDAVIT

WILLIAM R. DAY, after being first duly sworn, deposes and says that at the times herein mentioned and at the present time, he is Secretary of Wyandotte Transportation Company and Wyandotte Chemicals Corporation; that Wyandotte Transportation Company is a wholly owned subsidiary of Wyandotte Chemicals Corporation; that at

the times herein mentioned the Barge Wychem 112 was owned by Wyandotte Transportation Company and was being operated under bareboat charter by Wyandotte Chemicals Corporation; that on March 17, 1961, the loading of 1,110 tons of liquid chlorine on the Barge Wychem 112 was completed at the Geismar, Louisiana plant of Wyandotte Chemicals Corporation and on March 21, 1961, said barge and cargo departed from said plant in tow of the M.V. Eastern; that the cargo was owned by Union Carbide Corporation and was to be delivered to its plant at South Charleston, West Virginia.

On March 23, 1961, the Barge Wychem 112, while in tow of the M.V. Eastern, sank in the Mississippi River at approximately the 352.5 mile mark, approximately seven miles below Natchez, Mississippi.

[fol. 44] At the time of the accident the water was at high level and continued to rise thereafter. From March 24 through April 16, 1961 unsuccessful attempts to locate the sunken barge were made by representatives of her owner, her underwriters and by the U. S. Navy. After the water level subsided and during the period from September 6th through September 9th, extensive diving and dragging operations were conducted by a firm of marine divers employed by the vessel owner, without success.

During the period from September 26th through October 3, 1961, a further search was made by the use of a magnetometer. This instrument was owned and operated by an outside firm. It was used, during the search, under the supervision of representatives of the owner and underwriters of the sunken barge. Although the position of two underwater objects were disclosed it was determined that it would not be feasible to identify and reach the Barge Wychem 112 which appeared to be buried under hard packed sand and silt so a decision to abandon the Barge Wychem 112 was made.

On November 14, 1961 a letter addressed to Col. James E. Welch, District Engineer, Vicksburg District, P. O. Box 60, Vicksburg, Mississippi, bearing the caption "Abandonment of Barge Wychem 112, Official No. 283729" and signed

[fol. 45] by L. A. Thompson, Jr., Fleet Engineer, Wyandotte Transportation Company, was placed in the U. S. mails at Wyandotte, Michigan. In said letter Wyandotte Transportation Company abandoned all of its right, title and interest in the Barge Wychem 112 to the Government of the United States.

On October 1, 1962 the aforesaid L. A. Thompson, Jr., received a letter dated September 25, 1962, addressed to Wyandotte Transportation Company and signed by Col. Warren S. Everett, District Engineer, in which the tender of abandonment of November 14, 1961 was accepted and in which we were informed that the Corps of Engineers was proceeding to remove the Barge Wychem 112 under authority of the Secretary of the Army and under the provisions of Section 19 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C.A. 414).

Further affiant saith not.

/s/ WILLIAM R. DAY
William R. Day.

SWORN TO and subscribed in my presence this 18th day of March, 1963, at Wyandotte, Michigan.

/s/ LEONARD K. BREWER
Leonard K. Brewer, Notary Public
Wayne County, Michigan
Commission Expires: 3-5-66.

[fol. 46]

EXHIBIT C TO MOTION

WYANDOTTE TRANSPORTATION COMPANY

Wyandotte, Michigan

November 14, 1961

Col. James E. Welch, District Engineer
U. S. Corps of Army Engineers
Vicksburg District
P. O. Box 60
Vicksburg, Mississippi

RE: Abandonment of Barge WYCHEM 112
Official No. 283729

Dear Sir:

It was reported to Wyandotte Chemicals Corporation on March 23, 1961, that on that date at approximately 0645 EST, the barge WYCHEM 112 had sunk in the Mississippi River at approximately the 352.5 mile mark, seven miles below Natchez, Mississippi. At the time of the sinking, the WYCHEM 112 was upbound from Geismar, Louisiana in tow of the M.V. Eastern, owned and operated by the Union Barge Line Corporation; and laden with 1,110 tons of liquid chlorine. The WYCHEM 112 is owned by the Wyandotte Transportation Company, a wholly owned subsidiary of Wyandotte Chemicals Corporation of Wyandotte, Michigan. It was operated under bare boat charter by Wyandotte Chemicals Corporation. The cargo being [fol. 47] carried by the barge was the property of Union Carbide Corporation and was bound for delivery at South Charleston, West Virginia.

The loss of the WYCHEM 112 was reported to our underwriters; U. S. Salvage Association, New Orleans, Louisiana; U. S. Coast Guard, New Orleans, La.; and the U. S. Army Corps of Engineers, Natchez, Mississippi.

Mr. Webb Kaiser of Wyandotte Chemicals Corporation Geismar Works proceeded to Natchez and there met with Mr. D. Ford of the U. S. Salvage Association, representing the underwriters. Kaiser contacted Captain William C. Smith, Master of the M. V. EASTERN and later he and Ford met with Captain J. Evans, Master of the M. V. ORLEANS, the Engineering Corps vessels working the area.

Captain Smith freely gave the information concerning the sinking, that he had transmitted to his shore office. In this report, he stated that weather conditions and visibility were good, but that the river was running high and the current at the reported sinking position was very strong.

Captain Smith states in his report that the cause of the disaster was as follows: "Strong current and an eddy at this location caused the barge to dive and sink." Captain [fol. 48] Smith elaborated further in his report essentially as follows: "At 6:45 A.M., EST, at mile 352.5 at the position shown on the diagram (a copy of the diagram was not obtained but indicated a position off light 352.5 or Morville Upper Light), Barge WYCHEM 112, loaded started to dive. The Master was on watch and he backed the EASTERN full astern to try to stop barge from diving. Due to the strong current, the barge kept on going. The stern of the barge raised up about four feet and snapped the rigging holding the barge. The port string of barges in the tow hit the diving barge and broke loose from the tow."

On March 24, 1961, Kaiser, Ford and Captain Evans of the U. S. Engineers on board the M.V. ORLEANS, made several runs over the reported area of the wreck and found no firm evidence as to actual position. However, Captain Evans indicated that there appeared to be a disturbance on the surface of the river within the reported area. This, in his opinion, was a possible clue as to the wreck's position. Captain Evans has worked this stretch of river for some 25 years and knows it well; accordingly, his opinions were considered valuable.

The following day, March 25, 1961, L. A. Thompson, Jr., the Fleet Engineer for Wyandotte Transportation Company's Great Lakes Fleet, arrived in New Orleans, to take charge of disaster details. The Geismar Works personnel reported their findings up to this point and Kaiser returned to Baton Rouge.

The next day, March 26, 1961, Mr. J. Tynan, Principal Surveyor of the U. S. Salvage Association's New Orleans Office, was contacted and it was requested that he set up a meeting with salvors in the area for the purpose of arranging search and salvage operations.

It is pertinent at this point to note that the river level at the time of the sinking was 42.4 feet, based on the Natchez gauge, which corresponds to 59.7 feet above mean sea level. These figures resolved to actual depths in the area of 25.7 feet minimum to 149.7 feet maximum. Further, a current of approximately 8 m.p.h. was running and a considerable amount of debris was being carried downstream.

The aforementioned meeting between salvors, underwriters' and owners' representatives was held, and it was agreed that because of river conditions, dragging or diving to locate the wreck, was not practical. At that time, the best estimate as to when the river level would subside was two months hence. This later proved to be an optimistic conclusion.

[fol. 50] Since it was apparent that other seache methods would have to be employed, outside assistance was sought. The U. S. Coast Guard was not equipped to assist, and declined. The U. S. Engineers had already made attempts with a fathometer and were unable to come up with any promising clues. Admiral Fred Warder, Commander of the 8th Naval District was then contacted and it was arranged with his staff to conduct a search using a helicopter with "dunking" sonar. This unit was to be from their anti-submarine squadron.

On March 29, 1961, a search was made by the Navy with the underwriters' and owners' representatives on the scene. This search was not successful, due presumably to electronic equipment failure.

On April 16, 1961, a second effort was made by the Navy, two helicopters being used, and a contact was made. This, of course, was a strong possible location of the wreck, but still had to be checked by divers. However, the river level was much too high for diving operations.

The consensus of opinion at this time was that there was little to do but wait for low water. Meanwhile, general plans for salvage were formulated. River levels, however, continued to rise and were reported to be the highest in some ten or fifteen years. On May 22, 1961, at a time original estimates called for low water, the river stage at Natchez was approximately two feet above flood stage with a gauge reading of 50 feet, or 7.6 feet above the level at the time of the disaster. During June and July, the water level subsided somewhat, and in July a meeting of the underwriters' and owners' representatives and salvors was called.

At this meeting, the salvors were given all information at hand and bids were requested for the search for and salvage of the wreck. Those bids were received late in July and analyzed by the Owners and Underwriters, and John S. Read Marine Divers of Beaumont, Texas was selected for the job. Read conducted extensive fathometer, dragging, and diving operations from September 6th through September 9th, without success. It became obvious at this point, that conventional search methods could not produce results.

In investigating and trying to develop other search procedures, we learned of the Magnetometer Method. The Magnetometer will measure the strength of the earth's magnetic field, and since large masses of magnetic materials tend to concentrate and intensify the field, they can

be located by this device. The services of Mossington and Sawtelle, Magnetometer operators, were employed. This [fol. 52] firm has a Magnetometer which is mounted on a one-man submarine that it towed by an aluminum catamaran. The rig was transported to Natchez from Detroit, and Mossington and Sawtelle, supervised by underwriters and L. A. Thompson, Jr. conducted a search of the area for the period September 26th to October 3rd, 1961.

Prior to the actual search, the Magnetometer had been calibrated, using a moored barge of dimensions similar to the WYCHEM 112 and a characteristic reading was secured. During the search, the ability of the Magnetometer to detect underwater objects was proven by its reaction to underwater pipelines of known position.

The approximate area of search covered was between mile marks 358 and 344 and two Magnetometer reactions typical of those of a barge were recorded. One was approximately one mile downstream from the reported sinking position, and the other was at the reported position. Taylor Diving of New Orleans was then employed to investigate the two positions and attempt to identify the submerged objects.

Underwater search of both positions disclosed that the objects one of which was presumed to be the WYCHEM 112, were buried under 15 to 20 feet of hard packed sand and silt. Thus, it was impossible to reach them.

[fol. 53] At this point, it was decided that further efforts to definitely identify, and subsequently salvage the Barge WYCHEM 112, would not be feasible with the result that said barge constitutes either an actual or constructive total loss. Consequently, on October 23rd, we tendered abandonment of the wreck to our underwriters who have declined to accept the abandonment.

We believe further efforts to locate or salvage the wreck would be unsuccessful.

In conclusion, based on the foregoing, we, as owners of the Barge WYCHEM 112, hereby abandon all our right, title and interest in the said Barge WYCHEM 112 to the Government of the United States, and, as such owner, we will assume no further responsibility for said sunken vessel or its cargo, from this date henceforth.

will you kindly acknowledge receipt of this letter at your earliest convenience?

Respectfully Submitted,

WYANDOTTE TRANSPORTATION COMPANY

/s/ L. A. THOMPSON, JR.
L. A. Thompson, Jr.
Fleet Engineer

CC: Mr. W. D. Carle, III
McCreary, Hinslea & Ray
860 Union Commerce Building
Cleveland 14, Ohio

[fol. 54]

Mr. Donald Carlson
Johnson & Higgins
First National Building
Detroit 26, Michigan

V. G. Niebergall, Captain, U.S.C.G.
Senior Investigating Officer
328 Custom House
New Orleans, Louisiana

Mr. C. H. Beard, Gen. Traffic Manager
Union Carbide Company
270 Park Avenue
New York 17, N.Y.

Mr. J. Tynan, Principal Surveyor
U. S. Salvage Association
610 Delta Bldg., 348 Baronne Street
New Orleans, Louisiana

Messrs. A J Denizer, G. W. Schwarz
Wyandotte Transportation Company

EXHIBIT D TO MOTION

U. S. ARMY ENGINEER DISTRICT, VICKSBURG
CORPS OF ENGINEERS

U. S. POST OFFICE AND COURT HOUSE BLDG.
Vicksburg, Mississippi

In Reply Refer
To Symbol *LMKVL*

25 September 1962

Wyandotte Transportation Company
Wyandotte, Michigan

Gentlemen:

We refer to your letter of 14 November 1961, Subject: [fol. 55] "Abandonment of Barge WYCHEM 112, Official No. 283729", giving notice that you were abandoning the Barge WYCHEM 112. We acknowledged receipt of this letter of 22 November 1961. On 26 July 1962, we clarified our letter of 22 November 1961 by noting that it only acknowledged your tender of abandonment and stated that the Government did not accept the abandonment in any manner which would convey title or responsibility for the vessel to the United States, because we did not at that time consider the sunken Barge WYCHEM 112 as an obstruction to navigation.

We received your letter of 21 August 1962 stating that you planned to make a further search and resurvey of the reported sinking area of the Barge WYCHEM 112 and requesting information about river levels, the speed of the current and bottom contour changes in that area. However, we have delayed answering your letter since subsequent to our advice to you on 26 July 1962, the Secretary of the Army reconsidered the determination as to obstruction and found that it was in fact an obstruction to navigation. We are, therefore, proceeding under authority of the Secretary of the Army to remove the chlorine Barge

WYCHEM 112 under provisions of Section 19 of the River and Harbor Act of 3 March 1899 (33 USCA 414).

We have located the sunken Barge WYCHEM 112 and [fol. 56] are proceeding immediately to conduct salvage operations.

Accordingly, in view of the very grave danger to public health and to navigation that will exist until we remove the chlorine cargo from the Mississippi River, we hereby accept your tender of abandonment of 14 November 1961. The United States will assume full responsibility for the removal and disposal of the Barge WYCHEM 112 and its cargo. After recovery of the Barge WYCHEM 112 and/or its cargo, the United States will retain the right of possession and title thereto as salvor.

Sincerely yours, -

/s/ WARREN S. EVERETT
WARREN S. EVERETT
Colonel, CE
District Engineer

IN UNITED STATES DISTRICT COURT

Number 668

EXCEPTIONS OF UNION BARGE LINES CORPORATION—
Filed April 1, 1963

Comes now Union Barge Line Corporation, respondent, and excepts to the libel of United States of America on the ground that the same fails to state a cause of action against respondent upon which relief can be granted for the reasons that (1) libellant is not entitled to reimbursement of expenses incurred in pursuance of a public duty [fol. 57] and (2) there is no legal basis for recovery herein either in the common law or in the statutes of the United States.

New Orleans, Louisiana, March 29, 1963.

Lemle & Kelleher, By: George B. Matthews, By:
George A. Frilot, III, Proctors for Union Barge
Line Corporation, 1836 National Bank of Com-
merce Building, New Orleans 12, Louisiana.

IN UNITED STATES DISTRICT COURT

Number 668

MOTION OF UNION BARGE LINE CORPORATION FOR
SUMMARY JUDGMENT—Filed April 1, 1963

Comes now Union Barge Line Corporation, respondent, and moves the Court to enter summary judgment in its favor in accordance with the provisions of Rule 58 of the Admiralty Rules of the Supreme Court of the United States on the ground that the pleadings and the letter attached hereto and marked Exhibit "A" for identification, being a letter from the United States Army Engineer District, Vicksburg, Corps of Engineers, to Wyandotte Transportation Company, Wyandotte, Michigan, dated September 25, 1962, show that defendant is entitled to a judgment [fol. 58] as a matter of law.

New Orleans, Louisiana, March 29, 1963.

Lemle & Kelleher, By: George B. Matthews, By:
George A. Frilot III, Proctors for Union Barge
Line Corporation, 1836 National Bank of Com-
merce Building, New Orleans 12, Louisiana.

(EXHIBIT A: Copied herein on pages 42 and 43.)

IN UNITED STATES DISTRICT COURT

Number 668

EXCEPTIONS OF UNION CARBIDE CORPORATION TO LIBEL AND,
ALTERNATIVELY, MOTION TO DISMISS—Filed April 4, 1963

To the Honorable the Judges of the United States District Court for the Eastern District of Louisiana, Baton Rouge Division:

Exceptor, Union Carbide Corporation, pursuant to Rules 27 and 35 of the Admiralty Rules of the Supreme Court of the United States specifically excepts to Articles Eighth, Tenth, Twelfth and Fourteenth of the Libel on the grounds that the allegations contained in Articles Eighth, Tenth and Twelfth of the Libel are irrelevant, immaterial and incompetent, and contain conclusions and matters of law and conclusions of fact rather than specific pleadings of fact. Exceptor further excepts to Article Fourteenth of [fol. 59] the Libel on the grounds that it is not a comprehensive statement of the damages as required by the Rules.

Union Carbide Corporation further shows that the Libel fails to state a claim against Union Carbide Corporation upon which relief can be granted and must be dismissed. Alternatively, Union Carbide Corporation moves that the Libel filed herein be dismissed since Libelant does not have a cause of action which may be asserted herein against this Respondent.

George Denegre and Robert B. Acomb Jr. of Jones, Walker, Waechter, Poitevent, Carrere & Denegre, 225 Baronne St., New Orleans 12, Louisiana, Proctors for Exceptor.

IN UNITED STATES DISTRICT COURT
Number 668

MOTION OF UNION CARBIDE CORPORATION FOR
SUMMARY JUDGMENT—Filed April 4, 1963

Union Carbide Corporation, Respondent herein, moves for a summary judgment on the grounds that under the law and the facts there is no responsibility on part of this respondent for the matters alleged in the Libel. Mover relies upon the affidavit attached to this motion and the law cited in its attached memorandum of authorities. Mover respectfully requests that this Court grant a summary judgment in Mover's favor dismissing the Libel filed herein.

[fol. 60] Respectfully submitted,

George Denegre, Robert B. Acomb, Jr., Jones,
Walker, Waechter, Poitevent, Carrere & Dene-
gre, 225 Baronne Street, New Orleans 12, Louisi-
ana, Proctors for Mover.

Number 668

AFFIDAVIT OF D. E. WITTENBERGER

State of New York,
County of New York:

Before me, the undersigned authority, a notary public in and for the State and County aforesaid, personally came and appeared D. E. Wittenberger, who, after being duly sworn by me, notary, did depose and say:

That he is Purchasing Agent of Union Carbide Corpora-
tion. That as Purchasing Agent of said Corporation he
has possession of and access to the files of said Corporation
in connection with the purchase by said Corporation of

liquid chlorine from Wyandotte Chemicals Corporation. Affiant gives this affidavit based upon both Corporation records and his personal knowledge.

Affiant states that the cargo of liquid chlorine transported aboard the Barge WYCHEM-112 was purchased by Union [fol. 61] Carbide Corporation from Wyandotte Chemicals Corporation pursuant to a contract entered into between said corporations, a copy of which contract is hereto attached, made a part hereof and marked "Exhibit A". That Union Carbide Corporation took no action whatsoever in connection with the arrangement of transportation of the cargo of liquid chlorine loaded aboard the Barge WYCHEM-112, nor did Union Carbide Corporation, through its employees or any other representatives, have any contact with the common carrier, Union Barge Line Corporation, in connection with any movement of liquid chlorine aboard the Barge WYCHEM-112.

Affiant further states that Union Carbide Corporation did not own the Barge WYCHEM-112 and that apparently the Barge WYCHEM-112 was owned by Wyandotte Transportation Company, a subsidiary of Wyandotte Chemicals Corporation. Union Carbide Corporation had no contract, either directly or indirectly, with Wyandotte Transportation Company, and Union Carbide Corporation's only contract was said contract (Exhibit A) with Wyandotte Chemicals Corporation. That, pursuant to the terms of said contract between Union Carbide Corporation and Wyandotte Chemicals Corporation, Wyandotte Chemicals Corporation agreed to, and in fact did undertake to, provide a barge to transport the cargo of liquid chlorine from Geismar, Louisiana, to Charleston, West Virginia, and in fact did provide the Barge WYCHEM-112. That Union Carbide Corporation [fol. 62] did not at any time charter the Barge WYCHEM-112, nor did it at any time have any ownership or any interest of any character whatsoever in said barge, or any control of said barge.

That pursuant to said contract the loading of the Barge WYCHEM-112 at Geismar, Louisiana, was under the exclusive care, custody and control of Wyandotte Chemicals

Corporation. Union Carbide Corporation was not present through any employees or any other representatives at the loading of said Barge WYCHEM-112. That Union Carbide Corporation did not, at any time have any employees or any other representatives present aboard the M/V Eastern, owned by Union Barge Line Corporation, and that the towing services performed for said barge were solely and exclusively under the control and supervision of Union Barge Line Corporation.

That pursuant to said contract, all arrangements made concerning the loading of the liquid chlorine aboard the Barge WYCHEM-112 and the transporting of the Barge WYCHEM-112 and its cargo were made by Wyandotte Chemicals Corporation. Union Carbide Corporation did not participate in any manner whatsoever in, and had no knowledge concerning, the contractual arrangements between Wyandotte Chemicals Corporation, Wyandotte Transportation Company and Union Barge Line Corporation.

[fol. 63] Pursuant to said contract between Wyandotte Chemicals Corporation and Union Carbide Corporation, Wyandotte Chemicals Corporation agreed to sell " * * * liquid Chlorine * * * in Seller's (Wyandotte Chemicals Corporation's) tank barge or barges, * * * to be shipped to Buyer's (Union Carbide Corporation's) Charleston, W. Va., plant, * * * " and although Union Carbide Corporation insured itself against loss of or damage to the cargo, it did not exercise any incidents of ownership in the cargo and did not exercise any control of the cargo whatsoever.

D. E. WITTENBERGER.

Sworn to and subscribed before me the 2nd day of April, 1963.

Marie Coen
Notary Public.

Number 668

EXHIBIT "A" TO AFFIDAVIT

CHLORINE-CAUSTIC SODA SALES AGREEMENT

This AGREEMENT, made the 13th day of July, 1960, between WYANDOTTE CHEMICALS CORPORATION, a Michigan corporation whose address is Wyandotte, Michigan (hereinafter referred to as SELLER), and UNION CARBIDE CHEMICALS COMPANY, DIVISION OF UNION CARBIDE CORPORATION, a New York corporation, whose address is 30 East 42d Street, New [fol. 64] York 17, New York (hereinafter referred to as BUYER).

SELLER agrees to sell to BUYER and BUYER agrees to purchase from SELLER, units of chlorine and 50% liquid caustic soda, 76% Na_2O basis (hereinafter called "caustic soda"), under the following terms and conditions:

1. *Quantity and Shipment.* Buyer's partial requirements at the rate of approximately ten (10) Units (as hereinafter defined) per calendar day of liquid chlorine in SELLER's tank barge or barges, or at the maximum rate as can be delivered in SELLER's two—1000-ton capacity barges assigned to this service, which ever is the greater, to be shipped to BUYER's Charleston, W. Va., plant, and caustic soda in SELLER's tank cars, F.O.B. SELLER's works, to be shipped to BUYER's Institute, W. Va., plant, or the Linde Company's plant at North Tonawanda, N. Y., or Visking Company's plant at Chicago, Illinois, as BUYER shall elect.

Should BUYER's partial requirements for Units of chlorine and/or caustic soda increase over BUYER's estimate of its contemplated partial requirements on the date of this agreement for the period of this agreement, SELLER shall have the opportunity to furnish such additional partial requirements under the same terms and conditions as herein provided.

BUYER assumes no obligation to purchase any specific [fol. 65] quantity hereunder, any provision herein to the

contrary notwithstanding, provided, however, that in the case of chlorine, BUYER agrees to purchase from SELLER no less than the percentage of its actual requirements of chlorine that 40 tons per day bears to its actual requirement on the date of this agreement.

2. *Price Unit* as adjusted under the provisions of Paragraph 4 hereof, F.O.B. SELLER's works, transportation charges up to /ton on chlorine shipments to be for BUYER's account; any excess to be prepaid and allowed by SELLER; and freight equalization, nearest recognized producing point, to be allowed by SELLER on caustic soda shipments.

3. *Unit.* A Unit shall consist of four (4) tons of liquid chlorine and one (1) ton of caustic soda. Calendar quarterly adjustments in billing shall be made as follows: The number of Units purchased in any calendar quarter hereunder shall be determined by dividing the number of tons of chlorine purchased by four (4); and the resulting number of Units shall be multiplied by the Unit price to give the "Gross Quarterly Billing," which shall then be adjusted according to subparagraphs A or B below:

(A) If the number of tons of caustic soda purchased in the same calendar quarter shall be less than of the aforesaid number of tons of chlorine, SELLER will credit [fol. 66] BUYER for the difference between such 25% and the caustic soda purchased at the rate of of the Unit price per ton.

(B) If the number of tons of caustic soda purchased in said calendar quarter is more than 25% of the aforesaid number of tons of chlorine, BUYER will be charged with that amount of caustic soda in excess of such of the Unit price per ton, less applicable actual freight equalization allowance.

4. *Price Escalation.* Any increase or decrease from time to time in the price per ton of liquid chlorine or

liquid caustic soda, as published in the OIL, PAINT AND DRUG REPORTER, a publication of The Schnell Publishing Company, above or below the corresponding price in effect as of the date of this agreement, as adjusted in accordance with the following formula, shall be added to or subtracted from the price per Unit set forth in Paragraph 2 hereof.

To the Unit price as last adjusted shall be added or subtracted the net change in the lowest published price per ton of caustic soda, F.O.B. SELLER's works, tanks car lots, BUYER's cars, multiplied by and the net change in the lowest published price per ton of liquid chlorine, F.O.B. SELLER's works, single container tank car lots, BUYER's car lots, BUYER's cars, [fol. 67]-multiplied by

Any such increase or decrease shall be effective hereunder as of the date OIL, PAINT AND DRUG REPORTER states that such increase or decrease became, or is to become, effective.

5. *Invoices and Payment.* SELLER shall render calendar monthly invoices to BUYER for the number of Units purchased hereunder, such number of Units to be determined as stated in Paragraph 3. Such invoices shall be payable on or before the tenth day of the next succeeding calendar month. Quarterly the ratio of caustic soda to chlorine shall be considered and any adjustments under Paragraph 3 shall be also billed and/or credited.

6. *Term.* The initial term of this Agreement shall be for the calendar year 1961 and year-to-year thereafter, unless either party shall have given written notice to the other to the contrary on or before October 1, 1961, and on or before September 1 of any subsequent contract year.

7. *Taxes.* Any sales, use, or excise tax or other charge imposed directly upon the liquid chlorine or liquid caustic soda sold hereunder, by federal, state, or municipal authorities, hereafter becoming effective within the life of this Agreement, shall be paid by BUYER.

8. *Force Majeure.* Failure of either party to perform [fol. 68] its duties and obligations hereunder if caused by fire, storms, floods, strikes, lockouts, accidents, war, riots or civil commotions, inability to obtain railroad cars or material, embargoes, any state or federal regulation, law, or restriction, seizure or requisition of materials specified in this contract by the Government of the United States or of any state, or of any agency thereof, or by reason or any compliance with a demand or request for such material for any purpose for national defense, or any other cause or contingency beyond the reasonable control of said party (whether or not of the same kind of nature as the causes or contingencies above enumerated) shall not subject the party so failing to any liability to the other, to the extent that such failure is attributable to any of the foregoing causes.

9. *BUYER's Responsibility.* BUYER assumes full liability and responsibility for compliance with federal, state, and municipal laws, ordinances, and regulations governing unloading, discharge, storage, handling, and use of the liquid chlorine and liquid caustic soda supplied hereunder, and also all liability for results of use by BUYER thereof, whether alone or in combination with other products or materials.

10. *CLAIMS.* Claims against SELLER on account of quality, errors in weight, are waived unless made in writing [fol. 69] within thirty (30) days after arrival of shipment at destination, and SELLER's liability for damages hereunder shall in no case exceed the purchase price of the particular shipment with respect to which such damages are claimed, plus transportation charges paid thereon.

11. SELLER hereby agrees that the materials produced hereunder will be in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and of Regulations and Orders of the United States Department of Labor issued under Sec-

tion 14 thereof, and agrees to so certify on its invoices if so directed by BUYER.

12. *Price Protection Clause.* If at any time during the contract period BUYER receives a bona fide offer of similar material of like quality at a price at which the cost to BUYER for such material delivered at BUYER's plant would be below the cost to BUYER for material hereunder delivered at BUYER's plant, and SELLER on receiving evidence of this offer refuses; or within 15 days thereafter fails to meet such lower price, then BUYER may purchase elsewhere at such lower price such amounts as it may desire or terminate the agreement.

13. *Favored Nation Clause.* If, during the period of this agreement, the SELLER shall sell to any other vendee in the United States of America, material of similar [fol. 70] quality as the aforesaid product, in like or smaller total quantities and upon similar terms to those covered hereby and at a price lower than that then in effect hereunder, the BUYER shall be entitled to such lower price on the quantities delivered to it hereunder so long as such lower price is in effect with respect to such other vendee.

14. *Notices.* Notices hereunder shall be deemed properly given, if in writing, transmitted by registered or certified mail, and addressed to the respective parties at the addresses first hereinabove given, or at any duly noticed change thereof.

15. *Non-Supersession.* This Agreement does not supersede the Agreement dated January 12, 1960, as amended, and it is understood that any purchases and deliveries made hereunder will be in addition to any purchase and delivery obligations called for under the Agreement dated January 12, 1960, as amended.

IN WITNESS WHEREOF, the parties have signed and executed this Agreement, through their duly authorized officers, as of the date first hereinabove given.

WYANDOTTE CHEMICALS CORPORATION (SELLER)

By ROBERT B. SEMPLE /s/
Robert B. Semple, President

[fol. 71]

ATTEST:

WILLIAM R. DAY
/ William R. Day, Secretary

UNION CARBIDE CHEMICALS COMPANY
DIVISION OF UNION CARBIDE CORPORATION (BUYER)

By R. C. SCHMITZ /s/
Purchasing Agent

ATTEST:

JOHN CONWAY /s/

EXHIBIT "B": Letter dated November 14, 1961 from L. A. Thompson Jr., Fleet Engineer, Wyandotte Transportation Company, to Col. James E. Welch, District Engineer, U. S. Corps of Engineers, copied herein at pages 36 to 41.
EXHIBIT "C": Letter from Warren S. Everett, Colonel, CE, District Engineer, dated 25 September 1962 to Wyandotte Transportation Company copied herein at pages 42 and 43.

[fol. 72]

IN UNITED STATES DISTRICT COURT

Number 668

AFFIDAVITS AND EXHIBITS OF LIBELANT IN ANSWER TO
MOTIONS FOR SUMMARY JUDGMENT—Filed July 15, 1963

AFFIDAVIT

Warren S. Everett, being duly sworn, deposes and says on personal knowledge that:

1. He is a Colonel in the United States Army Corps of Engineers and is District Engineer of the United States Army Engineer District, Vicksburg.

2. He wrote the following letters or telegrams, except letter of 22 November 1961 written by his Executive Officer, Captain Thomas W. Marshall, III, C.E., copies of which are attached:

- a. November 22, 1961, to Wyandotte Transportation Company.
- b. July 26, 1962, to Wyandotte Transportation Company.
- c. September 25, 1962, to Wyandotte Transportation Company.
- d. October 16, 1962, to General Counsel, Union Carbide Corporation.
- e. October 23, 1962, to Wyandotte Transportation Company.

[fol. 73] 3. The listed letters or telegrams were all written pursuant to the Code of Federal Regulations for the Corps of Engineers, 33 C.F.R. § 209.410, which reads as follows:

Abandonment of wrecks. By the maritime law the owner of a vessel which is sunk without fault on his part may abandon the wreck in which case he cannot

be held responsible for removing it even though it obstructs navigation. That law has not been changed by section 15, 19 and 20 of the River and Harbor Act of March 3, 1899 (30 Stat. 1152, 1154; 33 U.S.C. 409, 414, 415), which fully recognize the owner's right of abandonment. However, a person who willfully or negligently permits a vessel to sink in navigable waters of the United States may not relieve himself from all liability by merely abandoning the wreck. He may be found guilty of a misdemeanor and punished by fine, imprisonment, or both, and in addition may have his license revoked or suspended. He may also be compelled to remove the wreck as a public nuisance or to pay for its removal.

4. In no way did he have the authority, nor did he waive or vary the liability under 33 C.F.R. § 209.410, of [fol. 74] Union Carbide Corporation, Wyandotte Transportation Company or Union Barge Lines Corporation, nor did he understand that anyone was asking him to do so, nor did he intend to delegate any assumed authority to his Executive Officer, Captain Thomas W. Marshall to act contrary to Code of Federal Regulations, 33 C.F.R. § 209.410 quoted in paragraph 3 above.

Warren S. Everett.

State of Mississippi
County of Warren

Personally appeared before me, a Notary Public in and for said County and State, Warren S. Everett, who being duly sworn, acknowledged that he executed the foregoing affidavit on the date shown therein.

Given over my hand and seal at Vicksburg, Mississippi, this 19th day of June, 1963.

T. E. Edmonds, Notary Public, My Commission expires October 6, 1966.

(Seal)

C
O
P
Y

22 November 1961

LMKKC

Wyandotte Transportation Company
Wyandotte, Michigan

ATTENTION: Mr. L. A. Thompson, Jr.

[fol. 75] I refer to your letter dated 14 November 1961 stating that you have abandoned barge WYCHEM 112 which was sunk in the vicinity of mile 353 AHP Mississippi River on 23 March 1961.

Under provisions of the River and Harbor Act, approved 3 March 1899 the Owner's right of abandonment of a vessel which is sunk in a navigable stream without fault on his part is fully recognized.

Your letter advising that you are abandoning this barge will be properly recorded in the records of this office for future guidance.

Sincerely yours,

Thomas W. Marshall, III, Captain, C.E., Executive
Officer.

26 July 1962

LMKVL

Wyandotte Transportation Company
Wyandotte, Michigan

Gentlemen:

On 22 November 1961 we acknowledged receipt of your letter of 14 November 1961, giving notice that you were abandoning the Barge WYCHEM which sank in the Mississippi River at Mile 353 AHP on 23 March 1961.

Your representative at the Chlorine Institute on 11 July 1962 reported that you abandoned the Barge WYCHEM to the Corps of Engineers. Please note that our letter of 22 November 1961 only acknowledged your tender of abandonment, and you should not construe our letter as an inference that we accepted the abandonment. This will confirm our position that we did not then and have not "accepted" abandonment of the WYCHEM in any manner by which title or responsibility for the vessel is conveyed to the United States.

The Corps of Engineers can only accept abandoned vessels which obstruct navigable channels and which the provisions of 33 USCA 414 require the Corps of Engineers to remove as a hazard to navigation.

The sunken Barge WYCHEM that you abandoned has not been, and is not now, an obstruction to navigation.

Sincerely yours,

Warren S. Everett, Colonel, CE, District Engineer.

Copy to: Navigation Branch

(Copy of letter from Warren S. Everett, Colonel, C.E., dated 25 September 1962, to Wyandotte Transportation Company copied herein at pages 42 and 43.)

[fol. 77]

LMKVL

TELEGRAM

OFFICIAL BUSINESS
GOVERNMENT RATES

USA ENGR DIST, VICKSBURG
P. O. BOX 60, VICKSBURG, MISS.
16 October 1962

General Counsel
Union Carbide Co.
270 Park Avenue

Attention: Justin J. Karl, Esq.
New York, New York

RE: Chlorine Barge—WYCHEM 112.

Acting pursuant to the proclamation of the President of October 10, 1962, and pursuant to the Disaster Relief Act, 42 U.S.C. 1855, 1855a-1855g, the Corps of Engineers is engaged in removing liquid chlorine which is reported to belong to Union Carbide Company. We have been advised by the Cargo Underwriters that they have paid the loss to you and that they have not accepted the chlorine cargo as part of the adjustment.

The tanks of the barge WYCHEM 112 are being removed in order to get at the cargo. As you know, the chlorine cargo is an inherently dangerous substance and constitutes a nuisance which must be abated.

This is to advise that the Corps of Engineers intends to transfer the chlorine to a storage facility as soon as it is brought to the surface.

We feel sure that some members of your operating staff, either personally or through the Chlorine Institute have been keeping you advised of the difficult problems involved

[fol. 78] and that some branch of your company has a file on the situation.

The reason for this telegram is to advise you that if Union Carbide Company has any objection to this proposed plan, Union Carbide should reply by wire and state its position.

I am airmailing copies of this telegram to:

Mr. Archie Stevenson
Chubb and Son, Inc.
New York, New York

Neere, Gibbs and Co.
Cincinnati, Ohio

Warren S. Everett, Colonel, CE, U. S. Army Engineer District, Vicksburg.

LMKVL

.23 October 1962

Wyandotte Chemicals Corp.
Baton Rouge, Louisiana

Gentlemen:

Our lawyers have asked me to correct a misapprehension in the second paragraph of your letter of October 22, 1962, which they tell me makes no real difference in our intended operation.

You said that the chlorine cargo was the property of the United States. They tell me that there was no abandonment [fol. 79] ment from Union Carbide and that the cargo still belongs to Union Carbide, subject to the Government's lien for salvage and other related expenses, which probably will exceed the value of the cargo.

The cargo is being removed by the Government under the Disaster Relief Act, 42 USC 1855, 1855 e-g. We have sent a telegram dated 16 October 1962, to the General

Counsel of Union Carbide Company and have sent copies to Chubb and Son and to Neere Gibbs and Company, who represent the cargo underwriters. A copy of the telegram is inclosed. No reply has been received to their telegram.

Meanwhile, the cargo is in our possession as salvors and as the United States is abating a nuisance and protecting its citizens under the Disaster Relief Act, we will protect you against any suit by anyone challenging that possession.

Sincerely yours,

Warren S. Everett, Colonel, CE, District Engineer.

1 Incl Telegram

(Copy of telegram from Warren S. Everett, Colonel, CE, U. S. Army Engineer District, Vicksburg, dated 16 October 1962 addressed to General Counsel, Union Carbide Co., 270 Park Avenue, Attention Justin J. Karl, Esq., New York, New York, copied herein at pages 59 and 60.)

[fol. 80]

Number 668

AFFIDAVIT

Edward A. McDermott, being duly sworn, deposes and says on personal knowledge that:

1. He is the Director of the Office of Emergency Planning in the Executive Office of the President.
2. He has read the pleadings, the exceptions, motions to dismiss, and motions for summary judgment in this case.
3. The exceptions, motions to dismiss and motions for summary judgment are in error in stating that the Government action in abating the hazard created by the chlorine cargo of Barge WYCHEM 112 was solely under the Rivers and Harbors Act of 1899.
4. On the contrary, the Government acted under the President's executive powers and the Federal Disaster Act

(Public Law 875, 81st Congress, as amended), a matter known to the Director because he personally directed the action after conferences with the President. These conferences with the President were occasioned by the failure of the existing Rivers and Harbors Act of 1899 to cover chemical health hazards by poisonous gas cargo which was in tanks on a barge lying under twenty feet of silt. The Chief of Engineers questioned that there was any authority to act under the Rivers and Harbors Act in these premises.

[fol. 81] 5. The salvage operation had to be undertaken during the proper stage of the Mississippi River and time was of the essence. The President directed the Office of Emergency Planning to command and assume full responsibility for the abatement of the potential disaster. The Office of Emergency Planning ordered the Corps of Engineers to proceed immediately with plans to remove the chlorine cargo, and ordered the Department of Health, Education and Welfare to take public safety measures with the aid of the American Red Cross and other disaster agencies.

6. The entire cost of the salvage and public safety operation has or will come out of the Federal Disaster Act appropriation, and not out of the Rivers and Harbors Act appropriation. All Federal departments and agencies participating in the salvage and public safety operation paid the regular salaries of their personnel, their usual fringe benefits, and the administrative overhead costs which would have been paid in any event.

7. As late as May 1963, the problem of filling the legislative void has not been resolved.

Edward A. McDermott.

Subscribed and sworn to before me this 21st day of May, 1963.

Clara L. McGaha, Notary Public, My Commission Expires Sept. 30, 1967.

[fol. 82]

AFFIDAVIT

State of Texas
County of Harris

Before Me, the undersigned authority, on this day personally appeared Joseph J. Carroll who after first being duly sworn, upon his oath deposes and says:

I am President of J & J Marine Diving Co., Inc., 302 Cavalier Lane, Pasadena, Texas.

J & J Marine Diving Co., Inc., was called in by Brown and Root Marine Operators, Houston, Texas, to do the diving work on Operation Chlorine on October 1, 1962. I left Pasadena on the same day and arrived at the salvage site on October 2, 1962. I was on the salvage site from October 2, 1962 to November 6, 1962. I was in charge of all diving operations during the hours from 6:00 A.M. to 6:00 P.M. during that period.

The first day I went in the water to examine the Barge WY Chem 112, Liquid Chlorine Tank Barge, was October 15, 1962. I was in the water at the salvage site concerning this barge from October 15, 1962 to November 5, 1962 except for five or six days.

On October 30, 1962, I examined the entire stern section of the barge to determine what the conditions were from midship to the stern. There were no breaks, visible above the sand, in this section of the barge. The stern rake was completely uncovered. There was no sand on this rake. [fol. 83] All the bits were intact and exposed. The man hole cover on the stern rake was open and flat on the deck. The stern rake was full with sand. I did not examine the dogs on the cover. My main reason for examining the rake was to determine if enough sand had been removed to allow us to remove the two stern tanks.

From time to time as the barge was uncovered, the sand was removed. I examined the barge externally and internally. The only water tight compartments on the barge were the bow and stern rakes, except the four chlorine tanks. In my opinion, the bow and stern rakes did not have enough displacements to bring the barge to the surface if all the sand and water in these rakes had been removed and replaced with air.

In my opinion, the barge sank because the water built up to the extent that it came over the bow rake deck and flooded this bow rake provided the hatch was open. I noted the water could have (initialed JJC) built up high enough to come over the coaming and flooded into the tank well. In either case the barge would start to settle by the bow end and cause it to continue to flood herself. Also at this increased angle the liquid chlorine would flow to the bow end of the tanks and would help lower the bow.

[fol. 84] It is my opinion from inspecting and removing the midship loading deck section that the barge had to have buckled midships so that the bow and stern rakes were higher than the midship loading deck section. I believe this because the loading platform was bent down in the middle thortships and the metal around the loading domes was bent, ripped, rolled inward toward the center of this platform. Also the plating and beams under the deck were bent to conform to the contour of the chlorine tanks.

I have read the foregoing affidavit, and know the contents thereof, and believe the matters and facts herein to be true and correct.

Joseph J. Carroll.

Subscribed and Sworn to before me this 8 day of June, 1963.

Mrs. Mildred Carroll, Notary Public in and for
Harris County, Texas.

(Seal)

AFFIDAVIT

State of Texas
County of Harris

Before Me, the undersigned authority, on this day personally appeared John B. Galletti, Jr., who after first being duly sworn, upon his oath deposes and says:

[fol. 85] I am Vice President of J & J Marine Diving Co., Inc., 302 Cavalier Lane, Pasadena, Texas.

J & J Marine Diving Co., Inc. was called in by Brown And Root Marine Operators, Houston, Texas, to do the diving work on Operation Chlorine on October 1, 1962. I left Houston on the same day and arrived at the salvage site on October 2, 1962. I was on the salvage site from October 2, 1962 to November 6, 1962. I was in charge of all diving operations during that period during the hours of 6:00 P.M. to 6:00 A.M.

From about 7:00 A.M. on October 17, 1962 to 8:55 P.M. on October 19, 1962 the diving operations consisted of removing the deck section of the Barge WY Chem 112, Liquid Chlorine Tank Barge.

On October 20, 1962 the work started to remove the four chlorine tanks from this barge. The first tank was taken out on October 24, 1962. It was the upriver outboard tank. It could be described as the lower tank in the bow section. The second tank removed was the upriver inboard tank or the higher tank in the bow section. The second tank was removed on October 26, 1962. The third tank, downriver outboard or lower stern tank, was removed on November 1, 1962. The fourth tank, downriver inboard or higher stern tank, was removed on November 5, 1962.

From October 17, 1962 to November 5, 1962, except about [fol. 86] four or five days, I was in the water every day. On November 3, 1962, J. B. Stewart, Chief Field Operator, US Corps of Engineers, requested me to make a survey of bow section of this barge. I examined, by touch, the

entire bow section of this barge. The bow section was upstream and higher than the stern section. Both the bow and stern sections had a list of 20 to 25 degrees to the outboard or midstream side. Therefore the starboard side was higher than the port side. There was a break at the forward rake bulkhead and the tank well on the starboard side. At the deck line they were separated about one foot and still separated down in the sand. The rake deck section was about 2 inches lower than the tank deck section. The coaming should have been square at the corner but was ripped loose and rounded off. Inside the barge, there was a split about one and a half foot long about two feet down from the deck horizontal with the rake deck.

I examined the man hole and man hole cover on the starboard side of the bow rake deck. There was about one-half to one inch of sand on the rake deck at that time. The manhole cover was completely open and flat on the rake deck. The sand level inside of rake was level with the top of the coaming of the man hole. The rake was [fol. 87] completely full with sand. All four dogs were intact and working free. I worked all four dogs by hand and found them to be in working order.

The starboard and port running lights were missing. The center white running light was there but bent. I checked the air vent on the bow rake and found it was open.

I have read the foregoing affidavit, and know the contents thereof, and believe the matters and facts herein to be true and correct.

John B. Galletti, Jr.

Subscribed and Sworn to before me this 8 day of June, 1963.

Mrs. Mildred Carroll, Notary Public in and for Harris County, Texas.

(Seal)

Number 668

AFFIDAVIT

County of Hartford,
State of Connecticut, ss.:

Glenn R. Hilst, being duly sworn, deposes and says upon personal knowledge that he is Vice President of the Travelers Research Center, Inc., a non-profit research and development corporation incorporated under the laws of the State of Connecticut; that in 1957 the University of Chicago [fol. 88] conferred upon him the degree of Doctor of Philosophy in meteorology; and that prior to coming to the Travelers Research Center in 1960, he had been employed since 1954 by General Electric Corporation as an expert in diffusion of materials in stable atmospheres at the Hanford, Washington works of the Atomic Energy Commission.

That he personally made the hereinafter listed calculations regarding the hazard created by the sinking of the 2,220,000 pound chlorine cargo of Barge WYCHEM 112; and that the calculations are true and correct to the best of his knowledge and belief.

That the following conditions were assumed for the calculations:

1. Surface temperature inversion.
2. Minimum realistic atmospheric dispersion conditions consistent with the mode of release of the chlorine gas.
3. Windspeed of 4 miles per hour.
4. A point of release at the surface of the Mississippi River above the sunken Barge WYCHEM 112, approximately 10 kilometers southwest of Natchez, Mississippi.

That the calculations show the following results:

- I. For a maximum total release of 93,000 pounds of [fol. 89] chlorine gas, absolutely lethal exposures would have been experienced up to 12 kilometers from the point of release, which could have included Natchez, Mississippi. In addition, severely incapacitating exposures, including some deaths, would have been experienced to distances greater than 50 kilometers from the point of release.
- II. For an indeterminate total release of 58,000 pounds of chlorine gas, absolutely lethal exposures would have been experienced up to 11 kilometers from the point of release, which could have included Natchez, Mississippi. In addition, severely incapacitating exposures, including some deaths, would have been experienced to distances approximately 40 kilometers from the point of release.
- III. For a minimum total release of 45,000 pounds of chlorine gas, absolute lethal exposures would have been experienced up to 6 kilometers from the point of release. In addition, severely incapacitating exposures, including some deaths, would have been experienced to distances between 25 and 30 kilometers from the point of release.

[fol. 90]

Glenn R. Hilst.

Mr. Glenn R. Hilst, the above undersigned, does hereby state that the above facts are true and accurate to the best of his knowledge and that the above signature is applied willingly.

Rose R. Dinsmore, Notary.

My commission Expires April 1, 1965.

(Seal)

Number 668

AFFIDAVIT

County of Harford,
State of Maryland, ss.:

James W. Mannion, Jr., being duly sworn, deposes and says upon personal knowledge that he is the Assistant Branch Chief of the Chemical Process Engineering Branch of the Chemical Process Division, United States Army Chemical Research and Development Laboratories, Edgewood Arsenal, Maryland; that he received the degree of Bachelor of Engineering in 1949 from Johns Hopkins University, and of Master of Science in 1954 from Northwestern University; and that he has been a chemical engineer at the Edgewood Arsenal since 1956.

That he personally made the hereinafter-listed calculations [fol. 91] regarding the hazard created by the sinking of the 2,220,000 pound chlorine cargo of Barge WYCHEM 112; and that the calculations are true and correct to the best of his knowledge and belief.

That the following conditions were assumed for the calculations:

1. Each of the four containers of Barge WYCHEM 112 contained 550,000 pounds liquid chlorine at 85.5 p.s.i.a.
2. The containers were under 40 feet of water.
3. Water temperature was 60 degrees Fahrenheit.
4. The containers were made in accordance with the specifications of Avondale Shipyards engineering drawings of the cargo tank details, No. C 1224-T1 and No. C 1224-T2.
5. All physical and thermodynamic data were taken from the Chlorine Handbook (Diamond Alkali Co., Cleveland, 1962).

That the calculations are as follows:

- I. If one container is ruptured while submerged there would be an almost instantaneous release of 58,800 pounds of chlorine gas at the river surface. If more than one tank is ruptured the release would be proportionately greater.
- II. If the tank hatch and dome assembly is detached [fol. 92] while a container is submerged, there would be a release of 58,800 pounds of chlorine gas at the river surface at an initial rate of 1,150 pounds per second, approximately 45,000 pounds being released within the first minute after detachment.
- III. If a relief valve fails while a container is submerged there would be a release of approximately 45,000 pounds of chlorine gas within the first hour after failure.
- IV. If one container is ruptured while at the river surface, there would be an almost instantaneous release of 93,000 pounds of chlorine gas.
- V. If the tank hatch and dome assembly is detached while a container is at the river surface, there would be a release of 93,000 pounds of chlorine gas at an initial rate of 1,320 pounds per second, approximately 51,500 pounds being released within the first minute after detachment.
- VI. If a relief valve fails while a container is at the river surface, approximately 52,000 pounds of gas would be released within the first hour after failure.

James W. Mannion, Jr.

[fol. 93] Subscribed and sworn to before me this tenth day of June, 1963.

Charles B. Cohen, Notary Public in and for the State of Maryland, My Commission expires May 3, 1965.

(Seal)

[fol. 94]

AFFIDAVIT

E. D. Fales, Jr., being duly sworn, deposes and says on personal knowledge that he is the author of "Time Bombs in the Mississippi," an article appearing in the April, 1963, issue of Popular Science Monthly, and a copy of which is attached hereto; that the article is a reconstruction of the sequence of events relating to the sinking of Barge WYCHEM 112 and the raising of its chlorine containers; that the article was based on personal research and interviews with many of the people concerned, as reported therein; that certain assumptions in minor details, such as the exact words used in portions of the dialogue, have been made in the interests of dramatic narrative; and that the article is true and correct to the best of his knowledge and belief.

E. D. Fales, Jr.

New York

Subscribed and sworn to before me this 13th day of June, 1963.

Esther Eyl Talbert, Notary Public, State of New York,
No. 24-9276475, Qualified in Kings County, Cert. filed in
New York Co., Commission Expires March 30, 1964.

[fol. 95]

TIME BOMBS IN THE MISSISSIPPI

Four tanks of liquid death—chlorine—lay at the river bottom, ready to spew a lethal gas over two states.

By E. D. Fales Jr.

Two states braced for disaster. All ships on the Mississippi had been warned. Six thousand residents had fled Vidalia, La., and Natchez, Miss., where a 15-car escape train waited to gather up hundreds more. At least 40,000 gas masks had been given out, for at any moment a choking yellow cloud might spread like a horrible ghost into the night over Louisiana and nearby Mississippi.

The U. S. Weather Bureau had set up six emergency stations to test the slightest shift in wind, on which the safety of 70,000 now might hang.

Armed troops waited along Mississippi roads to snatch wrecked cars away and keep traffic moving if the gas came. Disaster workers flew in. The Red Cross evacuated the sick. Over Louisiana highways came a parade of vans—the disaster fleet of the Louisiana State Police.

In 20 towns, meetings were called. If the gas comes, citizens were told, *move fast and keep moving.*

A circle 60 miles across was declared the danger zone. It reached from Fayette, Miss., west to Acme, La., taking in long stretches of U. S. Highways 61 and 84. On the Mississippi River, ships and barges heading toward Natchez [fol. 96] were stopped and gas masks given crews and passengers.

Somewhere at the bottom of the river lay four weird time bombs that together contained more poison gas than was used in any major battle of World War I.

The nightmare had begun at dawn on March 23, 1961. The 3,500-hp. diesel towboat Eastern had been battling upriver behind 16 barges, hugging the eastern shore, working north in quiet backwaters.

Its barges rode four abreast. The left-front one, called Wychem 112, was making a 1,200-mile voyage from Baton Rouge to Charleston, W. Va. It carried a cargo for a large chemical company—four monster green-and-white steel tanks. Each, if stood on end, would tower over a six-story building. Rising from each was a steel dome that protected sensitive safety valves. The domes carried the ominous lettering, CHLORINE.

Seven miles south of Natchez, all northbound ships make the Natchez Island crossing. At 4:47 a.m., in hazy light, the Eastern came to the crossing and headed for the western shore. And at this moment the four front barges smashed headlong into a vicious spring-flood current.

A bow wave built up. Three of the four leading barges rode it out. But from Wychem 112 came staccato sounds like gunfire as the giant wave raced across her deck and crashed into her hold.

[fol. 97] The sounds were Wychem's cables parting. Swamped by the wave, the barge poked her bow under the surface, shot down like a submarine—and vanished mysteriously.

The river here, in flood, was 100 feet deep. The Army Engineers patrol boat that sped to the scene, fathometer going, should have had no trouble picking up strong echo signals from such a huge wreck. But no signals came back. And, later, when divers went down, they found no trace of a wreck at all.

No one worried—yet. A newspaper quoted an official as saying that a shipment of chlorine had sunk, but if any escaped it would merely “purify the muddy Mississippi.” This was a remarkable statement in the light of later events.

Liquid chlorine is a pale-yellow fluid. Released from tank pressure, it turns into green-yellow chlorine gas. By coincidence, not many days earlier, a railroad tank car of chlorine had burst in a train wreck near New Roads, La. A green-yellow cloud had scourged the countryside for

six miles. Over 100 people were taken, choking, to hospitals. A child died. Hundreds of animals were killed. Yet this had been a relatively small shipment, a mere 20,000 pounds. By contrast, there was 2,200,000 pounds of liquid chlorine in the four submerged tanks.

But more than a year passed during which the prosperous Valley towns lived in blissful ignorance. Then last summer [fol. 98] someone told the U.S. Public Health Service: Somewhere at the bottom of the river was enough chlorine to fill a whole train of tank cars. Since all wrecks rust, it was only a matter of time before it would escape. There was also the danger that a ship might ram the wreck, for the river was dropping 60 feet to a 40-foot summer depth. Or a falling anchor might smash the tanks. Or weakened safety valves might blow.

Quickly, the nation's "disaster central"—the office of Emergency Planning in Washington—swung into action. On September 7, a decision was made. Since the Army Corps of Engineers keeps rivers navigable, it would be their job. Orders went to the Vicksburg district: "Find those tanks. Use any means to get them out—fast." The district chief in Vicksburg, Col. Warren S. Everett, read his orders and whistled. If rust had set in, even minutes might count. But where were the tanks?

A remarkable search began. Three days later, a Navy submarine-hunter plane, cruising low near Natchez Island, began getting strikes on its electronic sub-hunting gear. Yet this was an area that had been carefully searched before. The answer lay in the shifting sands of the river bottom. The barge had become a restless ghost, moving with the sands.

A crew was sent to drill the river bottom. Water-jet probes, which would not burst the tanks, were used. The [fol. 99] next afternoon, 65 feet below the surface and 14 feet deep in sand, a probe hit a hard object. The Wychem, after a year and a half, had been found.

Col. Everett moved fast. On September 30, his salvage contracts were let. At 4 a.m. the next day a \$10 million commando salvage fleet was highballing toward the scene from a Gulf Coast port 600 miles away. It included two towering hammerhead derrick-barges, an ocean tug, two floating crew-hotels, and 20 other craft. At the same time, rolling east from California came trucks bringing 16 "wind machines"—gasoline-powered fans used in fighting Western forest fires. Should the gas escape, engineers would try to roll it back behind a wall of wind to give the 130 crewmen a chance to get off their ships.

A call went out for divers. Courage and skill were needed: Underwater cutting torches, burning at 5,000-degrees F., would have to be held steadily within an inch and a half of the steel tanks. This would be like holding a lighted match beneath a fuse, for steel, in chlorine, lights up and burns at 400 degrees.

The salvage contracts went to two Gulf Coast engineering outfits: Triple-C Boats, Inc., and Brown & Root, marine operators.

In all the excitement, few citizens had noticed three [fol. 100] dusty pickup trucks from Texas that plowed along the levee near Natchez and discharged their load: a pile of diving suits, some underwater cutting torches, and eight solemn-faced men—divers.

They came from an outfit called J & J of Pasadena, Tex. The two Js stand for Joe and John: Joe Carroll president and chief diver, and John Galletti, vice-president.

Lights glittered all over the salvage fleet when Carroll, Galletti, and six hand-picked divers saw it. A curtain of sound hung in the night: the whine of compressors, the roar of wind-machines tuning up, the clatter of hammers.

For days before they dared enter the river, Carroll and his team pored over blueprints of the Wychem, memorizing every rivet. Meanwhile, a diving station was set up on the Bolin, one of the two derrick barges.

When Carroll dived on October 14, he was appalled by the blackness of the river. It was like diving into strong coffee. He couldn't see his hand before his helmet, or even the little round window itself. He dropped cautiously, letting himself down a hand line. He wore no diving shoes, only soft galoshes. He didn't want to kick holes in rusty metal.

A diver lives by his lifeline—and his tender. Carroll's tender, a little man in a red steel hat, happened to be another Joe Carroll; his father. As Joe Jr. descended, [fol. 101] his father cautiously fed out lifeline—air pipe, steel safety wire, and phone line all wrapped in one.

Underwater, Joe Jr. let himself drop slowly. He was 20 feet down when he heard the propellers of a big barge train, similar to the one to which the Wychem had belonged, fighting its way up the other side of the river. Then a surge of water swept past him, swinging him away from the hand rope. Though the barges were a quarter-mile away, the underwater current they set up were trying to tear him away from his hand line.

Carroll hung on hard, waiting for the currents to subside, then continued on down. He was to have this experience many times, whenever a large ship or barge train passed. Now, letting himself down, he was suddenly stopped at 40 feet. His feet had hit something soft.

He groped cautiously and felt a small mound of sand. Wishing desperately that he could see, he thought of calling for floodlights but decided they'd be useless.

In the darkness, he had three fears: He might kick a hole in a rusted tank; he might dislodge heavy wreckage that could smash a tank; or he might disturb the sensitive spring-loaded safety valves on top of each tank, set to blow off under certain emergencies. The valves were shielded inside the protective steel domes. But if they were damaged or had become seriously rusted, they might now [fol. 102] be frail as paper. He lay prone to spread his weight and began digging carefully.

Minutes later Carroll's voice reached those on deck. "I'm on the dome of a tank and the damned safety hatch is wide open!" He was right over the naked valves. If they popped off now, he'd be instantly caught in a geyser of yellow chlorine.

Carroll backed away cautiously, coming to rest on a sand drift that he knew must cover a tank. Clammy forces began pulling at his feet. He moved to escape and a moment later his helmet rang against a hard object. He'd floated into a grotesquely twisted steel handrail reaching up as though the Wychem were trying to climb out of its sandy grave.

The bottom of the Mississippi River is never still. It flows slowly, like a moving sidewalk—toward the sea. The curious force clutching at Carroll's feet was the effect of shifting sands. It was these that had buried the Wychem so quickly. If he made a misstep they might bury him, too.

For days, two Army dredges had been doing their best to uncover the wreck, sucking away mountains of loose sand. But since they had not dared drop their clumsy "suction snouts" near the tanks, they had dug a vast crater around it. This crater now was 800 feet wide, and the Wychem rose at its center.

Carroll phoned his discoveries to the deck. Still blind, he now found that by shutting his eyes he could get a better sense of feel and direction. After that, he always worked with his eyes shut.

[fol. 103] For two hours he explored, and what his fingers "saw" appalled him. It had been an impact wreck. The Wychem had rammed the bottom with enough force to bend itself in half and hurl its 100-foot stern half, along with two tanks, upward until they had tried to fold over the forward half. Then the stern had fallen back.

Toward noon Carroll went topside. "It's one hellish mess," he told his team. "Before we can go for the tanks, we've got to airlift."

An airlift is an angry pipe with the kick of a mule. Get between it and a wall and it will smash your ribs. This one was a 10-inch-diameter, 85-foot-long steel suction pipe.

Night had fallen when the airlift was ready, and John Galletti went down into the river to receive it. He grabbed it in a bear hug and guided it down between the tanks. He drove his shoulder against it and called for power.

The mule began to kick. With a roar, the airlift went to work. On one side of the pipe a high-pressure water jet blasted the sand between his feet, loosening it. On the other, a screaming air jet, turned upward into the bottom of the airlift, created a mighty siphon. Galletti heard sand and stones booming up in the big pipe; the airlift was beginning its work.

Other divers relieved him: Herb Atwood, Norman Knudsen, Jim Bush, Don Hackin. Then Galletti took over again. [fol. 104] Toward midnight, those on deck heard a cry: "Cut!" Galletti's left foot had been pulled into the suction pipe. Someone cut the power. He withdrew his foot and went on dredging. More and more, the tanks were being exposed. Yet the shifting sand kept trying to cover them up. Once diver Tom Hynson used the water jet to hose off the tank tops. It was like using a garden hose under water.

For three days and nights the airlifting went on. On the 19th, Carroll went down to size up the situation.

The No. 1 tank on the port forward side, to be tackled first, was tipped, and slowly creeping toward a sharp steel edge of the barge. The No. 2 tank hung ominously above No. 1. The after tanks, 3 and 4, were in better shape. But all had snapped some of their steel tie-downs, the powerful five-inch straps that anchored them to the barge. And if enough tiedowns snapped unexpectedly the tanks might roll.

Falling wreckage was a hazard. The tank walls were only $1\frac{3}{8}$ inches thick, and tests had shown that even a small hole would grow by chemical action. Liquid chlorine, spurting out, would become a gas, bubble to the surface, and hang low over the river. Even a mild seven-mile-an-hour breeze could blow it into Natchez in an hour.

But the great danger was the electric torches. They can cut through steel as though it were butter. The flick of a flame against a tank could mean disaster.

[fol. 105] Carroll's best torch man was a big Texan named Will Brown. "Wee Willie" had one weakness: The greater the danger, the more he hated to quit.

This was the man Carroll chose to start the surgery. His assignment was to burn away tangled railings and pipes, then cut the loading deck—a large steel platform—into sections for lifting.

On October 19, Brown went down with his pistol-like torch. Eyes shut, standing on the No. 1 tank, he found a torn railing, pushed the torch against it and called: "Make it hot!"

On the Bolin, someone closed a switch, throwing 400 amperes into the torch. Brown pulled the trigger and waited for the dazzling flame that, he expected, would help him see.

He heard a sizzling sound. But no light came. His fingers grew hot; the torch was blazing not two feet from his eyes, and he couldn't see it. He thought: "Now I do need eyeballs in my fingers."

Almost immediately he made another discovery: The flame refused to bite the steel. Barge and tanks had been painted with tough epoxy-resin paint. After 18 months it was still protecting the metal: He had to burn it for a full 15 seconds before the flame would touch steel. Even so, he often had to chisel or file the paint away.

[fol. 106] To cut the supporting beams, it was necessary to crawl under the deck. Brown had just begun a cut there when the explosion came.

They heard it up on the Bolin. The loudspeaker squawked wildly and thunder shook the deck. Task Force Chief Ira Boswell and Salvage Chief W. B. Nelson heard it in disbelief. Men reached for gas masks. Then there was silence, and from the depths, a dark, bubbling swirl appeared.

The silence was broken by the urgent chatter of an outboard motor. Coming fast was a 21-foot surveillance boat, Corky, with engineer Curtis Love at the helm. Love yanked the throttle open and raced the Corky directly into the swirl, his free hand spraying the air with gas-detecting fluid from an atomizer.

If gas were spewing from the river, the fluid-ammonium hydroxide—would turn white, and Love would push the panic button. If he sounded a siren, all hands would abandon. The task force command would broadcast: "MAYDAY MAYDAY MAYDAY FLASH MAJOR ESCAPE OF GAS. ABANDONING." A headlong rush for shore would begin. And as the news spread 70,000 civilians would rush to cars, buses, and evacuation trains.

As Love reached the swirl, many eyes watched. Three times he squeezed the atomizer. Each time the spray hung briefly and remained clear. No chlorine—yet.
[fol. 107] But what had happened below?

Wee Willie Brown's cutting torch was a type fed by oxygen and hydrogen, and at times both gases escape unburned. When Brown went under Wychem's deck, the gases were trapped in an explosive mixture. Working blind, he could not see the gathering bubble, or red-hot bits of metal from his torch.

The blast came with no warning. There was a sudden roar. Brown's head rang, the live torch was torn from his hands, and he felt himself hurled through the water. Then he went numb all over.

He came to and heard Joe Carroll on the phone. Carroll was coming down. Suddenly Brown remembered his torch, humming with 400 amperes. He shouted topside: "Make it cold. *Make it cold!*" Someone cut the power.

Then Brown, angry at being tossed around, found his torch and roared; "Hell, I'm all right. Make it hot!" He went to work again.

Diver Don Hackin got it next: A smashing explosion like a hand grenade sent him up, bleeding from the nose. After that Carroll went down again.

Hydrogen explosions do happen, but why were these repeating? Fingering his way, Carroll found the trouble: Beams under the deck had trapped gases in several pockets. There was only one thing to do: drain them all.

He called for a torch, crawled out on deck, and began [fol. 108] burning holes. Minutes later an explosion hurled him away and stunned him. He'd found the first pocket. He rested, waited for his numb arms to come alive, and then cut again, only to be hit by another blast.

"He worked for an hour," says engineer Ed Kyle. "He was half dead when we brought him up, but he'd bored more holes than a woodpecker." There were no explosions after that.

From October 20 to 22 there were many minor problems, each calmly met and solved. Col. Everett stayed close by in his patrol boat. But he never interfered, and thereby won the gratitude of engineers and divers. Once, diver Hackin got blown to the surface feet first, by a blast of air. Another time, Wee Willie's diving dress ripped and filled. He was hauled up and dumped upside down to drain. His worried mates then saw him grinning at them, upside down, through his window.

Repeatedly the divers crept along the big chlorine tanks, feeling the clammy sides until they found the five-inch-wide tie-down straps. They burned these, a mere inch or two from the tank walls, until they twanged apart. Sometimes they shoved small asbestos sheets between straps and the tank for safety.

All the loose wreckage, was lifted by the night of the 22nd, and the No. 1 tank was ready for its "strait jacket"—a monster steel claw called a strongback. This was 60 feet

long and weighed 30 tons. On October 23 it was gingerly [fol. 109] lowered astride the tank and the divers lashed the big chlorine-bearing egg to it with 12 sling cables. The derricks wouldn't chance lifting the tank lest it break in the middle. Instead, they would lift the strongback. This, in turn, would lift the tank, which now lay shakily in its clutches.

At midnight the strongback was ready. Early on the 24th a big impact wrench was lowered to give the sling-cable turnbuckles a last tightening. Then the divers came up. It was now up to the derricks. The lift would have to be silky smooth, so—in this diesel age—the job was given to steam.

Lift day, the 24th, had dawned clear and fearful. To avoid confusion, firemen and police ashore were ordered not to sound sirens for *any* emergency—but gas. Children in 40 schools went through drills.

At the emergency weather station on the levee, one small problem arose. A screech owl from a nearby wood had developed an interest in the whirling wind cuts. It kept flying out to sit on the weather vane, and upset the readings. Weathermen kept running out to chase the owl so they could flash the correct readings by radio. At sunup, the breeze was from the north, good for Natchez but ominous for scattered communities southward. During the day it might shift.

The great danger now was that the No. 1 tank would be dropped. It could be lashed to the strongback only in the tilted position it had assumed in the wreck. During the lift, [fol. 110] it would have to be leveled; and this readjustment would throw tremendous strain on the sling cables.

There was also a weight hazard. Under water, the tank weighed 130 tons. But as it came up, its weight would soar to 350 tons. To this the strongback added its 30 tons. Never before had the hammerheads on the Bolin and the Herman B had to lift 380 tons of death. On the derricks, a half mile of slender cable would be moving on 40 sheaves, and every strand would have to hold.

Joe worried about those tank valves. Pressure in the tank was 85 p.s.i. The valves were set to pop at 160. But suppose they had weakened? What would happen when river pressure, now helping to hold them shut, was taken away?

There was a piece of bad news. On final inspection, a diver reported that the No. 1 tank, again tipping slowly, had raised eight inches off its cradle and had moved dangerously closer to the sharp steel edge. Haste became urgent.

At 2:25, a final briefing was held on the Bolin. It was as solemn as a prayer meeting. Then at 2:30 all hands scrambled, and the Bolin's derrickman, Don Harbolt, climbed to his pulpit.

In his seat at the controls, Harbolt laid his rebreather mouthpiece handy over his shoulder. He looked down over his two great hoisting drums, wound with shiny new steel cable, and glanced across a gap of water toward the other [fol. 111] barge, the Herman B. Over there, derrickman K. E. Anderson was climbing to his own cab.

At 2:48, Task Force Chief Boswell on the Bolin radioed Col. Everett, watching from the wheelhouse of the Lipscomb a few yards away: "We are ready to lift, Colonel."

Everett replied quietly: "Proceed, Mr. Boswell."

Simultaneously, a voice said in both Anderson's and Harbolt's earphones: "Lift on both derricks, half speed."

Harbolt flipped two levers, knowing that Anderson, on the other barge, would do the same. There was a rumble. The big drums shifted sideways, to contact the diving disks, and began to turn.

The steam engine on the Bolin is a 50,000-pound-pull lift-and-draw-works engine, a modern version of an old classic. When Harbolt opened the throttle, steam hissed, a piston slid, and a driving wheel began turning—slowly, then in a fast blur. Harbolt saw his towering derrick shake. The cable, moving in 20 shining strands, drew taut as a violin string. Slowly the drums began to turn.

Then he felt the strain come. Backstays tightened. The steam engine settled down to a brittle puffing, and the whole barge, half as long as a football field, tipped forward slightly under the weight. In its underwater cradle, the tank stirred.

[fol. 112] At 2:50 p.m. the Bolin radioed: "The lift has begun." The word flashed to Natchez, Washington, New Orleans. It was heard in homes, stores, cars, by 70,000 anxious people. Miles away, ships heard and stopped. In his wheelhouse, Col. Everett spoke quietly into his microphone: "All communication channels please stay clear for emergency."

Far down in the wreck, the tank settled slightly and a quiver ran up the cables—a kind of nervous burp. Then Harbolt fed more steam. At three p.m. the tank was coming up 18 inches a minute.

Joe Carroll, ready to dive if needed, was worried. He knew that a major adjustment was now at hand.

Then Harbolt got a signal to stop while the Herman B brought up its end to put the tank on an even keel. Still 15 feet under water, the tipsy tank began to level off. Harbolt fed steam again and the derricks on the two barges once more lifted together.

At 3:17 someone standing near Carroll whispered, "Great God!" A clammy white shadow grew in the water, just under the surface, growing imperceptibly brighter and flickering with ripples. At 3:19, the No. 1 tank shouldered its way out of the river, slow as a rising moon.

All hands had known it would be big, but none expected anything like this. The clammy thing kept growing, a monster coated with slime, sand, and dirty water. Gas- [fol. 113] suited chemists waited like Lilliputians to board it and plug any leaks. Men with detectors were everywhere, spraying the air.

The daring little motorboat Corky now shot out and sprayed the rising valve-dome. But there was no sign of gas: The tank still was holding.

The major adjustment came moments later. With no warning, one sling cable lost its grip and slipped.

It happened in a wink. A new ripple raced up the hoist cables. Harbolt felt it in his derrick. Then all together, the sling cables slipped.

An ugly clang sounded from the tank. The 30-ton strong-back lost its grip and began to slide. Then—with an enormous shock—it caught a new grip. The shift was over almost before it began. The steam engines kept their steady, silky pull as if nothing had happened.

By 3:21, the No. 1 tank was up. Water jets were turned on the slimy metal so men could go aboard, without slipping, to ram caps over the valve. A barge took the horrible thing away. As the tank sailed down the river, its tough white paint glistened.

"That," said a watching diver, "is what held the whole damned thing together." The epoxy resin that had so brutally fought the torches had with equal stubbornness fought off the rust that could have brought disaster.

[fol. 114] It had been an incredible 10 days of frightening work, without pause day or night. And there was more to come. But by November 5, the other tanks were recovered and eight tired divers threw their badly battered helmets into trucks and headed back to Texas.

AFFIDAVIT

County of Warren,
State of Mississippi, ss.:

John R. Currey, being duly sworn, deposes and says that he is Supervisory Cartographer, Chief Drafting Section, for the United States Army Engineer District, Vicksburg, at Vicksburg, Mississippi; that he has prepared from the official records of the Corps of Engineers the annexed chart showing the state of the Mississippi River near Natchez in the year 1874; that he has prepared

from the official records of the Corps of Engineers the annexed chart showing the state of the Mississippi River near Natchez in the year 1962, and work performed with Federal funds upon the Mississippi River in the Natchez area from 1874 to 30 June 1962; and that the annexed charts are true and correct to the best of his knowledge, information and belief as derived from the aforesaid official records of the Corps of Engineers.

John R. Currey, Supv. Cartographer, Chief, Drafting Section.

[fol. 114a]

State of Mississippi
County of Warren

Personally appeared before me, a Notary Public in and for said county, Mr. John R. Currey, who being duly sworn, acknowledged that he executed the foregoing statement on the 25th day of April, 1963.

Given over my hand and seal at Vicksburg, Mississippi, this 25th day of April, 1963:

T. E. Edmonds, Notary Public; My Commission expires October 6, 1966.

(Seal)

(Chart of Mississippi River not included in Designation of Record for Reproduction.)

Number 668

AFFIDAVIT

Captain J. J. Evans, being duly sworn, deposes and says on personal knowledge that he is the Master of the Patrol Boat M/V ORLEANS, operated by the United States Army Engineer District, Vicksburg. That on March 23,

1961, he boarded the M/V ORLEANS where it was moored at Natchez, Mississippi shortly before 8:00 a.m. That the M/V ORLEANS was scheduled to leave Natchez at 8:00 a.m. on regular patrol duty. That upon boarding he turned on Channel 4 on the ship-to-ship radio. That as soon as the radio was on he heard the M/V EASTERN trying to reach the M/V ORLEANS. That when he re-[fol. 115] sponded over the ship-to-ship radio, the Master of the M/V EASTERN (whose voice he recognized and who identified himself as Captain Smith), notified him that the M/V EASTERN had sunk Barge WYCHEM 112 150 yards out from the left shore at Morville, mile 353 AHP; that Barge WYCHEM 112 was an open-hopper type barge with chemical tanks mounted in it; that Barge WYCHEM 112 was carrying 1,110 tons of caustic soda; that the M/V EASTERN was leaving the Barge WYCHEM 112 behind without having ascertained the exact location of the sinking; and that the M/V EASTERN was continuing up the Mississippi River with the remainder of the tow to locate a safe place to tie off the tow. That Captain Smith stated that he would appreciate any assistance deponent and the M/V ORLEANS could give in trying to locate the sunken Barge WYCHEM 112. That deponent then proceeded with the M/V ORLEANS to the reported point of sinking but was unable to locate the sunken barge. That deponent checked the depth of the river where the Barge was reported to have sunk and found that depth at the reported location was 72 feet. That at 9:00 a.m. deponent sent a radiogram to Thomas M. Irby of the Navigation Branch of the United States Army Engineer District, Vicksburg, informing the District of the sinking of the chemical barge. That shortly after he sent the radiogram Thomas M. Irby called him over the F.M. radio for further details regarding the sinking. That he repeated to Thomas M. Irby the substance [fol. 116] of his conversation with Captain Smith of the M/V EASTERN, particularly that part of the conversa-

tion wherein Captain Smith notified him that Barge WYCHEM 112 contained 1,110 tons of caustic soda. And that at no time prior to 11 September 1962 following the sinking of Barge WYCHEM 112 did deponent have any notice or knowledge that the cargo on board Barge WYCHEM was hazardous liquid chlorine rather than caustic soda.

Witness my hand this 14th day of May, 1963.

J. J. Evans, Captain, Master, M/V ORLEANS.

Number 668

AFFIDAVIT

Thomas M. Irby, being duly sworn, deposes and says on personal knowledge that he is the Chief of the Channel Section of the United States Army Engineer District, Vicksburg. That while on duty on March 23, 1961, he received a radiogram at about 9:30 a.m. (a copy of which is attached as Exhibit A) from Captain J. J. Evans, Master of the Corps of Engineers Patrol Boat M/V ORLEANS, which read: "M/V EASTERN, UNION BARGE LINES, SANK A CHEMICAL BARGE ABREAST OF MORVILLE UPPER LIGHT 6:45 AM THIS DATE, ABOUT 150 YARDS FROM LEFT SHORE. UNABLE TO LOCATE." That upon receipt of the radiogram he called Captain Evans aboard the M/V ORLEANS by FM [fol. 117] radio. That Captain Evans reported that the Master of the M/V EASTERN had called the M/V ORLEANS at 8:00 a.m., by ship-to-ship radio, giving notice that Barge WYCHEM 112 had sunk 150 yards out from left shore at Norville, Mile 353 AHP, and that Barge WYCHEM 112 was an open type barge with chemical tanks mounted in the barge and contained 1,110 tons of caustic soda. Captain Evans reported Barge was sunk in approximately 72 feet of water. That he made a memo-

randum of his telephone call with Captain Evans immediately following the call (a copy of which is attached as Exhibit B). And that at no time prior to 14 November 1961 following the sinking of Barge WYCHEM 112 did he have any notice or knowledge that the cargo on board Barge WYCHEM 112 was hazardous liquid chlorine rather than caustic soda.

Witness my hand this 14th day of May, 1963.

Thomas M. Irby.

EXHIBIT A TO AFFIDAVIT

RADIOGRAM

4 30 ORLEANS 9 AM 23 MAR 61

IRBY NAVIG BR

M/V EASTERN, UNION BARGE LINES, SANK A
CHEMICAL BARGE ABREAST OF MORVILLE UP-
PER LIGHT 6.45 AM THIS DATE, ABOUT 150 YARDS
FROM LEFT SHORE. UNABLE TO LOCATE.

EVANS

[fol. 118]

EXHIBIT B TO AFFIDAVITDISPOSITION FORM

FILE NO. LMKKC SUBJECT: Navigation Difficulty
at Morville, mile 353
AHP

TO: The District Engineer

FROM: Chief, Navigation Section

DATE: 8/23/61 COMMENT NO. 1

THRU: Chief, Operations Division
Chief, Navigation Branch

1. Captain Evans of the M/V Orleans reports that the M/V Eastern, owned by the Union Barge Line Company, Pittsburgh, Pa., sank a chemical barge, W. Y. Chem 112, 150 yards out from left shore at Morville, mile 353 AHP. Barge was sunk in approximately 72 feet of water. This was an open type barge with chemical tanks mounted in barge and contained 1,110 tons of caustic soda.

2. The Orleans has been unable to locate barge.

/s/ THOMAS M. IRBY
Thomas M. Irby
Const. Management Engineer
Chief, Navigation Section

[fol. 118a]

Number 668

AFFIDAVIT OF GEORGE J. BODIE

George J. Bodie, being duly sworn, deposes and says that he is a Commander in the United States Coast Guard, Chief, Merchant Marine Technical Branch, Office of the Commander, Eighth Coast Guard District; that he is the same person whose signature appears on the annexed plan; that upon this plan he has marked in red the location of the cracks on the Barge WYCHEM 112/ Avondale Shipyards, Inc., Hull Number 988; that he obtained the information as to the cracks from the divers who examined the hull and from examination of samples of the hull cut there from by the divers and brought to the surface.

George J. Bodie

Subscribed and sworn to before me this 27th day of May, 1963.

C. R. Hallberg, LCDR (4106) USCG, Legal Officer,
Eighth Coast Guard District.

(Seal)

Authorized to Act as Notary by 10 U.S. Code 936, 14 U.S. Code 636, and LSA RS 35:7.

(Chart annexed excluded from the designation of record for reproduction.)

[fol. 119]

GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE
THE NATIONAL ARCHIVES

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I Certify That the annexed copy, or each of the specified number of annexed copies, of each document listed below is a true copy of a document in the official custody of the Archivist of the United States.

Records of the Office of the Chief of Engineers
Record Group 77

File 29944

Letter of 17 February 1899

In testimony whereof, I, Wayne C. Grover, Archivist of the United States, have hereunto caused the Seal of the National Archives to be affixed and my name subscribed by the Assistant Archivist, Office of Military Archives in [fol. 120] the District of Columbia, this 24th day of June, 1963.

/s/ WAYNE C. GROVER
Archivist of the United States

By /s/ G. PHILIP BAUER

SUBJECT: River and Harbor Bill.

OFFICE OF THE CHIEF OF ENGINEERS
UNITED STATES ARMY

Washington, February 17, 1899

Hon. W. P. Frye,
Chairman, Committee on Commerce
United States Senate.

My dear Senator:

In response to your request of February 16, I give you herewith a general clause which will, I think, fully accomplish the purpose expressed in your note of February 16 and the ideas suggested by a conversation in your committee room on the 15th. The words suggested refer, of course, only to those works which can be successfully carried on by contract, and in such connection it is right for me to state that it is the desire of the Chief of Engineers to carry on all work by contract, so far as it is possible in the interest of the United States. But cases will arise in which, from the possession of plant, or from some special conditions of work, it is most desirable, and in [fol. 121] some cases a necessary condition of work, that the United States should have the authority to do the work by day's labor and purchase of materials in open market or by contract. In going over the river and harbor act as passed by the House, all such cases in which the carrying on of work by day's labor is desirable have been referred to in the amendments suggested in a copy of the act herewith.

In consultation with the Chairman of the River and Harbor Committee of the House of Representatives it was suggested that a general provision permitting, in all cases where continuing contracts are authorized, that the work, unless otherwise specified, may be carried on by contract

or otherwise would be advantageous, inasmuch as it would only be taken advantage of in proper cases.

The wording suggested for the general clause attached hereto only has reference to contract work. To permit the Secretary of War to exercise his judgment in certain cases, it can be modified in such cases, as follows:

"Improving dollars: *Provided*, That contracts may be entered into by the Secretary of War for such materials and labor as may be required for prosecuting such improvement according to project dated, not to exceed in the aggregate dollars, or such work may be carried on by day's labor and purchase of materials in open market, to be paid for [fol. 122] as appropriations may from time to time be made by law."

Attention is respectfully invited to a copy of H. R. 11795, herewith, in which are certain suggestions as to modifications considered desirable. A similarly corrected copy was given to Hon. T. E. Burton, and is probably already with your Committee. Memoranda attached to this copy of the Act explain briefly the reasons for the modifications suggested.

Of such modifications the majority relate to the omission of the names of the District Engineer Officers submitting reports. It is believed that such names are simply introduced for the purpose of defining the projects which the appropriations refer to. The change suggested in such cases confines the project to the same report, but is intended to permit the recommendations of the Chief of Engineers and the Secretary of War to rule in any question as to the intent of Congress.

In addition to the matter above referred to I beg to invite your attention to the following:

In accordance with the direction of Congress in Section 2 of the river and harbor act of June 3, 1896, the compilation

of all general laws that had been enacted from time to time by Congress for the maintenance, preservation and protection of navigable waters of the United States was prepared and submitted to Congress together with a draft [fol. 123] of an act embodying such provisions and enlargements of the aforesaid laws as the experience of this office had shown to be advantageous to the public interests. The draft submitted covered every subject embraced in the existing laws, with two exceptions, and was printed in House Document No. 293, 54th Congress, 2d Session, a copy of which is inclosed.

This proposed act I believe to be clear from ambiguity, and better adapted to serve the interests of commerce and navigation than the laws in their present form. The proposed act has 13 sections. The last three of which (Sections 11-13) were incorporated by the House Committee on Rivers and Harbors in the pending bill. (See sections 6 and 7 of H. R. 11795).

In my opinion it would be to the public interest to incorporate in the bill the remaining ten sections of the proposed act, and I can conceive of no objection thereto as these sections contain no new matter, but simply revise and make clearer and more definite laws that have been already enacted.

Sections one and two of the proposed act are intended to replace Section 7 of the act of September 19, 1890, as amended by section 3 of the act of July 13, 1892, and I beg to invite your attention to the accompanying brief giving special reasons why this particular law should be [fol. 124] revised and amended.

Very respectfully,

/s/ A. MacKENZIE

Lieut. Col., Corps of Engineers

7 inclosures.

GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE
THE NATIONAL ARCHIVES

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I Certify That the annexed copy, or each of the specified number of annexed copies, of each document listed below is a true copy of a document in the official custody of the Archivist of the United States.

Records of the War Department
Office of the Chief of Engineers
Record Group 77
Endorsement to File 31000

5 May 1899

In testimony whereof, I, WAYNE C. GROVER, Archivist of the United States, have hereunto caused the Seal of the National Archives to be affixed and my name subscribed by the Chief, Army and Air Corps Branch of the National Archives, in the District of Columbia, this 21st day of June, 1962.

[fol. 125]

/s/ WAYNE C. GROVER
Archivist of the United States

By /s/ VICTOR GONDOS, JR.

Cincinnati, O.

May 5, 1899.

Bixby, Maj. W.H.

Reqs. that such auth as is deemed proper by E. D. Dept. be delegated to him in the matter of removal of wrecks in the Ohio River. Under Sec. 13 R & H Act, Sept 19, 1890. Sec. 3 Act June 3, 1896, and Sec. 19 & 20 Act of March 3, 1899.

1st indorsement

OFFICE CHIEF OF ENGINEERS, U. S. ARMY

May 12, 1899.

Respectfully returned to Major Bixby

It is not thought that the enactment of sections 19 and 20 of the act of March 3, 1899, necessitates any particular change in the manner of removing wrecks from the Ohio River, nor in the operation of snag boats under section 13 of the act of September 19, 1890 and section 3 of the act of June 3, 1896. The effect of the legislation is simply to enlarge the powers of the Department for the benefit of navigation interests, and the general principles governing the subject remains unchanged.

Section 19 is practically the old law embraced in section [fol. 126] 4 of the act of June 14, 1880 and section 8 of the act of September 19, 1890, except that it permits earlier action by the Department.

Section 20 is intended to apply only in cases where navigation is completely stopped or specially endangered by a wreck, as for instance where it is sunk in a canal or lock, or in a narrow channel; and it is believed that the cases where it will be necessary to apply this law will be infrequent. As action under this section may involve the destruction of private property, careful judgment should be exercised in its application, and generally, the powers conferred by it should not be invoked unless the public

interest absolutely demands it. It is thought best that, for the present at least, the decision in all cases where it is proposed to apply this law, should be left to the Secretary of War, and, to that end, that all such cases should be reported to the Department, which can be done by telegraph involving a very slight delay.

Should it be demonstrated in the future that navigation interests would be better served by having engineer officers act in these matters without previous reference to the Department, the Secretary of War will be requested to delegate the needful authority.

This paper to be returned.

/s/ A. MACKENZIE
Acting Chief of Engineers

[fol. 127]

6545 Ohio Wks. REC'D CINTL., O. MAY 15 1899

2nd indorsement

U. S. Engineer Office,

Cincinnati, O. May 19, 1899

Respectfully returned to the Chief of Engineers U. S. Army, the necessary record having been made.

/s/ W. H. BIXBY
Major, Corps of Engineers, U.S.A.

Recd. Office Chief of Engrs. May 22, 1899

GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE

THE NATIONAL ARCHIVES

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I Certify That the annexed copy, or each of the specified number of annexed copies, of each document listed below is a true copy of a document in the official custody of the Archivist of the United States.

OFFICE OF THE SECRETARY OF WAR

RECORD GROUP NO. 107

RECORD CARD 1838

In testimony whereof, I, WAYNE C. GROVER, Archivist of the United States, have hereunto caused the Seal of the National Archives to be affixed and my name subscribed by the Chief, Army and Air Corps Branch of the National [fol. 128] Archives, in the District of Columbia, this 20th day of June, 1963.

/s/ WAYNE C. GROVER
Archivist of the United States

By /s/ VICTOR GONDOS, JR.

SUBJECT: "Cascade" Schooner Wreck of—in Black River
at Loraine, Ohio

FROM Acting Chief of Engineers

PURPORT OF COMMUNICATION. July 10, 1901

Returns telegram of Wm L. Hughes dated Loraine, Ohio asking whether the removal of a boat sunken in the harbor at that point rests upon the owner or the U. S. and states that he has reference to the sunken schooner "Cascade" lying in the Black River at Loraine, Ohio and as between the city and the owner of the boat it is not necessary for the W.D. to decide but is of opinion the burden of removal does not rest upon the U. S. that the vessel constitutes an obstruction caused by the voluntary or careless acts of those owning or controlling the boat and that the burden of removal rests upon them.

Recommends Mr. Hughes be so informed.

Letter of Alex J. Savoid, U. S. Inspector reporting on the matter herewith (Incl 1)

July 11 Recd Rec Div th CC 1 pm

July 15. Back Rec Div th JAG for remark 1-40 pm
 [fol. 129] . July 22 Back Rec Div with JAG indorsed report of even date that he is of opinion that under the circumstances the W.D. should not remove this wreck

July 23 To CC 11-50 am

W.D.W. July 31, 1901

Wm. L. Hughes, Esq.
 Lawyer
 Loraine, Ohio

Sir:

I have the honor to acknowledge the receipt of your telegram of the 29th ultimo as follows "Boat sinks in harbor. Neglect of owners, does Government, owners or city remove same"

In reply, I beg to advise you that your telegram was referred to the local engineer officer of the Department at Cleveland and that from a report made to him by an inspector, it was found that your inquiry has reference to the sunken schooner "Cascade" which was at one time used by a contractor engaged in dredging in Black River for the city of Lorain, and which after the completion of the work, was left by the contractor, where anchored or tied up, and eventually sunk.

Replying to the question whether the burden of removing this boat rests upon the United States, upon the owner by whose negligence it was sunk, or upon the city [fol. 130] of Lorain in whose service the boat was engaged, you are advised that as between the city and the owner of the boat it is not necessary for the War Department to decide, but that under the circumstances stated the burden of removing the boat does not rest upon the United States. It is believed the vessel constitutes an obstruction caused by the voluntary or careless acts of

those owning or controlling the boat and that the burden of removal rests upon them.

Very respectfully

Wm. Cary Sanger
Actg. Secy. of War

Mailed Aug. 1, 1901

Aug 1. Back Rec Div, th C of E 10-25 am Aug 2.

UNITED STATES OF AMERICA
TREASURY DEPARTMENT
WASHINGTON

Date: Jun 5 1963

ALL TO WHOM THESE PRESENTS COME, GREETING:

I certify that the annexed three (3) pages are a true copy of Memorandum for Merchant Marine Council relative for authorization to transport chlorine in bulk, by Chief, Port Security Division, dated 17 May 1943, as shown in Vol. 49, Journal of Merchant Marine Council, 1943, on file [fol. 131] in this Department.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

/s/ LUCILE HENDERSON
Chief, Directives Control and
Distribution Branch
Office of Administrative Services
Treasury Department

Mr. Harrison: Yes, and we have made a report on it.

Rear Admiral Johnson: Is there anything we can take exception to?

Mr. Harrison: No, sir.

Captain Heiner: If we give him tentative approval and after it is built, it cracks up, will we have to accept it?

Mr. Harrison: No. It first must meet the fundamental specifications and he understands that. This raft as indicated here is only a 15-person raft and there is no market for that and so he is now working on a 20-person raft. Until he can build one that will not fracture or fall apart, it won't be acceptable.

Captain Heiner: I was thinking about a raft after [fol. 132] being on board ship five or six months when it starts to get dried out.

Mr. Harrison: I don't see why that would be any more so than your plywood lifeboats.

Rear Admiral Johnson: If we gave it tentative approval, that would carry with it that it must pass all these fundamental tests.

Mr. Harrison: This just lets them go ahead and build their test boat.

Captain Heiner: If you give him tentative approval you indicate a moral obligation that you will accept it.

Mr. Harrison: Provided it meets our specifications.

Commander Jewell: I move that it be tentatively approved.

Mr. Harrison: I second it.

Action: The life raft was tentatively approved.

MMC-146

UNITED STATES COAST GUARD
WASHINGTON

THE COMMANDANT (OPS)
Refer to File: CG-6613

17 May, 1943

MEMORANDUM FOR MERCHANT MARINE COUNCIL

Subj: Request for authorization to transport chlorine in bulk

1. HQ is in receipt of a request from the Pittsburgh Plate [fol.133] Glass Company, Pittsburgh, Pennsylvania, for permission to transport liquid chlorine in tank barges on inland waterways and rivers emptying into the Gulf of Mexico. Compliance with this request will involve an amendment to the regulations governing the transportation of "Explosives and Other Dangerous Articles on Board Vessels".

2. There are attached hereto five sets of drawings submitted by the Pittsburgh Plate Glass Company identified as Dwgs. V-2098 and V-2099, indicating the manner in which it is proposed to transport the chlorine. Since these drawings were received the Technical Director and the Traffic Manager of Columbia Chemical Division, Pittsburgh Plate Glass Company visited HQ. As a result of their visit they decided to construct these tanks to the requirements of the regulations of the Coast Guard entitled "Marine Engineering Regulations and Material Specifications", deleting all reference to Interstate Commerce Commission specifications 105A500-W. It is understood that new plans showing this correction will be submitted.

3. Subsection 9 of R.S. 4472 provides: "Before any regulations or any additions, alterations, amendments, or repeals thereof are made under the provisions of this section, except in an emergency, such proposed regulations

[fol. 134] shall be published and public hearing with respect thereto shall be held on such notice as the (Secretary of Commerce) Commandant, U. S. Coast Guard deems advisable under the circumstances. Any additions, alterations, amendments or repeals of such regulations shall, unless a shorter time is authorized by the (Secretary of Commerce) Commandant, U. S. Coast Guard, take effect ninety days after their promulgation". Chlorine is now transported on board vessels in individual containers. The capacity of the largest unit container now authorized is one ton of chlorine. For rail transportation 55-ton chlorine tank cars are utilized. The proposed method of transportation which is essentially a bulk movement involves approximately 94 tons of chlorine in each tank or a total of approximately 380 tons per barge. In the past the chlorine industry has been divided in its opinion with reference to the transportation of chlorine in these amounts.

4. It is understood that this proposal to transport chlorine in bulk is a development associated with a defense plant operation, and because of this consideration time is a factor. Assuming the Council looks with favor upon this proposal there are three courses of action by which the request for authorization may be granted.

1. Promulgate emergency authorization and regulations without holding a public hearing.

[fol. 135] 2. Invite interested parties to an informal hearing and if the decision of the Council, following such informal hearing, is favorable promulgate the authority and regulations under the emergency provisions of the statute. The interested parties in this case in addition to the Pittsburgh Plate Glass Company might include Chlorine Institute, Inc., the Bureau of Explosives and Defense Plant Corporation.

3. Hold a public hearing in accordance with the provisions of the statute.

5. Inasmuch as time is an element and the possibility of an unfavorable reaction if the first course is followed, it is suggested that the second course may offer the best solution. Copies of proposed regulations covering the suggested transportation are attached hereto

NORMAN B. HALL
Chief, Port Security Div.

Incl

5. Pittsburgh Plate Glass Co. Dwgs. V-2098, V-2099 (2 sets) 12 Proposed regulations for transportation of liquid chlorine in bulk.

Captain Merrill: I move that Captain Hall's second recommendation be adopted.

Rear Admiral Johnson: I think that is a good recommendation there and if we hold a public hearing it will take considerable time. That's the second one.

[fol. 136] Captain Merrill made the suggestion that we adopt No. 2 of Captain Hall's suggestions. All in favor say aye.

Action: Captain Hall's suggestion approved.

MMC-805

American Merchant Marine Institute, Inc.
11 Broadway—New York.

April 16, 1943

TO MEMBERS OF THE

AMERICAN MERCHANT MARINE INSTITUTE, INC.

Gentlemen:

DISPOSAL OF BALLAST WATER FROM VESSELS

In a communication to the Institute under date of February 19, 1943, Vice Admiral R. R. Waosche, Commandant of the United States Coast Guard, Washington, D.C., re-

quested the co-operation of the shipping industry in the formulation of regulations designed to facilitate the disposal of ballast water from vessels in the interest of eliminating delays interfering (sic) with the war effort.

A committee was formed, composed of representatives of dry cargo and tanker operators, and, as the result of its study of this problem, it was agreed that the enclosed communication, containing the committee's recommendations on the subject, should be transmitted by the Institute to Vice Admiral Waesche today.

You will be kept informed of all important developments [fol. 137] connected with this matter.

Very truly yours,

R. J. BAKER
Secretary.

AMERICAN MERCHANT MARINE INSTITUTE, Inc.
11 Broadway—New York

April 16, 1943

Vice-Admiral R. R. Waesche
Commandant, United States Coast Guard
Washington, D.C.

Disposal of Oil-Contaminated
Ballast Water

Dear Admiral Waesche:

In compliance with your request of February 29, we attach our suggestions covering proposed instructions to be issued by the War and Navy Departments on the above subject.

A number of meetings have been held by our Committee, which consisted of representatives of cargo vessels as well as tankers. After making a thorough investigation

of this subject, all concerned unanimously reached the following two major conclusions:

(End of document.)

[fol. 138]

UNITED STATES OF AMERICA
TREASURY DEPARTMENT
WASHINGTON

Date: Jun 5 1963

ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I certify that the annexed six (6) pages are a true copy of pages 1, 2, 3, 4, 5 and 6 of the Minutes of a Meeting of the Merchant Marine Council (Executive Session) on 3 June 1943, as shown in Vol. 49, Journal of Merchant Marine Council, 1943, on file in this Department.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

/s/ LUCILE HENDERSON
Chief, Directives Control and
Distribution Branch
Office of Administrative Services
Treasury Department

UNITED STATES COAST GUARD HEADQUARTERS

MERCHANT MARINE COUNCIL

MINUTES OF A MEETING HELD

3 JUNE, 1943

Pursuant to the authority of R. S. 4405, as amended, (46 U.S.C. 375) and Executive Order 9083, dated 28 [fol. 139] February, 1942, and Reorganization Order dated 1 June, 1942—CO-020, a meeting of the Merchant Marine Council, United States Coast Guard, was duly convened in Room 2020, Coast Guard Headquarters, commencing at 11:15 A.M., 3 June, 1943, there being the following

COUNCIL MEMBERS PRESENT:

REAR ADMIRAL HARVEY F. JOHNSON, USCG, Engineer in Chief, Chairman;

CAPTAIN R. T. MERRILL, USCGR, Assistant to Chief Personnel Officer;

COMMANDER J. A. HIRSCHFIELD, USCG, Vice-Chairman;

COMMANDER R. A. SMYTH, USCGR, Executive Secretary;

COMMANDER H. T. JEWELL, USCG, Chief, Merchant Marine Personnel Division;

COMMANDER L. J. BERNARD, USCGR, Staff of Commandant;

MR. J. R. HARRISON, Chief of Technical Staff, Merchant Marine Inspection;

LEGAL ADVISER:

COMMANDER K. S. HARRISON, USCGR, Chief Counsel.

PRESENT ALSO:

MR. WM. T. BUTLER, Port Security Section; and

LIEUT. COMDR. MERLE A. GULICK, USCGR, Port Security Section.

AGENDA

I. AMENDMENTS

[fol. 140] 1. Emergency Regulations, Subchapter "O", Title 46 (Shipping)

File No. MMC-153.6(a) Additional equipment for lifeboats on seagoing barges of 100 gross tons or over.

File No. MMC-153.6 Change of Headnote.

II. DISCUSSION

File No. MMC-146 Hearing Re—Proposed Amendment Transportation of Chlorine in Bulk

File No. MMC-800-31 Confirmation, equipment approved, Vice Chairman.

PROCEEDINGS AND TRANSACTIONS

EXECUTIVE SESSION

The Council met in Executive session at 11:15 A.M., Thursday, 3 June, 1943.

Rear Admiral Johnson: The picture as I see it is first to determine whether we approve of the fundamental idea of transporting chlorine in bulk. You have all heard the comments and testimonies and I've heard no serious disagreement with it. Do we approve of this idea? Any objections?

Action: The Council unanimously approved the transporting of chlorine in bulk on barges.

Rear Admiral Johnson: I presume there are certain technical details to be worked out. That's a matter of detail for the technical people. I suppose the proper procedure is to check each one of these amendments here and see if there are any comments and then clear up each one.

Captain Merrill: Would it be in order for the Technical Section and those interested to go up and go over the entire thing?

Rear Admiral Johnson: Does that meet with the wishes of the Council?

Action: Captain Merrill's suggestion approved.

Mr. Butler: I would like to call the Council's attention to the first section of the proposed regulation "Liquid chlorine in bulk". This section limits the field of which this approved method of transportation of chlorine may extend. We did that purposely. At the original hearing, prior to promulgation of the regulations, some of the chlorine folks introduced a proposal that we permit bulk transportation of chlorine on board all vessels, regardless of type or size. That proposal was objected to by the Chlorine Institute at that time because commercial vessels would be at piers anywhere in the country. The chlorine would be handled by persons maybe not thoroughly familiar with the dangerous characteristics of chlorine, that concentrations of people would be subject to hazards of chlorine. And after further consideration the proposal was turned down.

[fol.142] Now I want to speak on the question of the barges. The bill which was introduced in Congress did contain an inspection of barges and all vessels that would carry any dangerous articles. In the hearing before the Merchant Marine House Committee, the proposed bill was sent to the Department of Commerce with the suggestion that they get together the interested persons and submit a new bill for their consideration. In the conference which followed the provision to require inspection of vessels not otherwise inspected was thrown out of the proposed bill, and in that form it passed through Congress. So, in view of that I believe it would be very difficult for us to enforce inspection requirement on the barges. However, in my conversations with the Pittsburgh Plate Glass representatives, I was feeling in my mind that they would have no objection to us inspecting the barges. Now that's all

I have to say with regard to the proposed regulation. I see no reason why there should be any stumbling blocks.

Commander Bernard: How would we do it without writing it in the regulations?

Mr. Butler: We could make it a provision of our approval, a provision that the barge be inspected.

Commander Bernard: In other words we approved this type of barge if such barge is inspected every six months or year.

[fol. 143] Rear Admiral Johnson: It seems to me what we are doing, we are approving the transportation of chlorine in bulk and the people who are going to transport it are going to submit plans and specifications. If we are going to approve these plans and specifications, why can't we say it in this regulation?

Commander Bernard: I would suggest that we refer it to Commander Harrison to see whether we have authority to inspect barges in the Regulations.

Action: Rear Admiral Johnson appointed Captain Merrill, Commander Harrison and Mr. Butler on the Inspection Committee.

Rear Admiral Johnson: There are several other technical details to be worked out and on this Technical Committee we will have Mr. Harrison, Commander Hirschfield and Mr. Butler.

TITLE 46—SHIPPING

CHAPTER II—Coast Guard: Inspection and Navigation

Subchapter N—Explosives and Other Dangerous Articles or substances, and Combustible Liquids on Board Vessels.

Part 146—Transportation or Storage of Explosives or Other Dangerous Articles or Substances, and Combustible Liquids on Board Vessels.

Part 146 is amended by adding the following:

[fol. 144] 146.24-15 *Liquid chlorine in bulk.* (a) Liquid chlorine may be transported in bulk on board Class "AA", "BB", or "BC" cargo barges when loaded in Class I fusion-welded steel tanks (pressure vessel type) independent of the structure of the vessel.

(b) Tanks shall be fabricated, constructed and tested in accordance with the applicable provisions of the regulations entitled "Marine Engineering Regulations and Material Specifications" of the U. S. Coast Guard. (46 CFR Parts 50 to 58, Incl.) In addition to other markings required to be shown upon the tank, the water capacity of the tank in pounds shall also be stamped thereon. Plans shall be submitted when requesting approval.

(c) Tanks shall be designed to withstand a minimum working pressure of 300 pounds per square inch. Each tank shall be provided with a manhole nozzle and cover on top of the tank of sufficient diameter to permit access to the interior of the tank and to provide for the proper mounting of venting, loading, unloading and safety valves. Other openings in the tank are prohibited.

(d) A protective housing of approved design shall be provided over the manhole cover and the valves and other openings in said cover, and so constructed as to provide that any leakage of the lading occurring around the cover, valves, gaskets, safety devices, etc., can readily be dis-
[fol. 145] charged into the water alongside the barge.

(e) Independent tanks shall be so fitted on board the barge as to provide sufficient space between the tanks and any fixed structural part of the barge, or in lieu thereof the installation shall be such as to make it practicable to move said tanks for the inspection of the structure of the barge and the tanks.

(f) The design indicative of the manner in which the tank is to be installed, supported, and secured on board the barge shall be approved by the U. S. Coast Guard.

prior to installation. Tanks shall be supported in steel cradles and secured in place with steel bands without the application of any clips or hangers welded or riveted directly to the shell of the tank.

(g) The maximum weight of chlorine loaded into a tank shall not exceed 1.25 times the water capacity of the tank. When more than one tank is installed in a barge, said tanks shall not be interconnected, either directly or by a manifold. When a tank is being filled or discharged no other of the barge's cargo tanks shall be connected to said filling or discharge line. Filling and discharge pipe connections shall be kept disconnected at the cargo tank, except when actually loading or unloading the lading of the cargo tank and the outlet valves on the tank shall, when the filling or discharge line is disconnected, be completely plugged [fol. 146] or blanked off.

(h) Because of the importance of the requirements that tanks shall not be loaded with chlorine in excess of 1.25 times the water capacity (weight basis) the following procedure is required to be followed:

1. The cargo tank to be filled shall be inspected to insure that it is empty and free from foreign matter. After being again made tight the tank shall be evacuated to at least 20 inches of mercury and then loaded with chlorine through a direct pipe line from a shore tank that is mounted on scales so that a predetermined weighted amount of chlorine is loaded into a cargo tank on board the barge. Any vapor vented during the loading operation shall be ignored in calculating the safe carrying capacity of the cargo tank.

2. After the loading operation is completed the vapor above the liquid chlorine shall be analyzed and if it should contain less than 80% chlorine, vapors shall be withdrawn through the vent line until the vapor content in the cargo tank shows at least 80% chlorine. The arsenious oxide or the potassium iodide methods of

analysis shall be used in determining (sic) the percentage [fol. 147] of chlorine in the vapor.

3. Upon completion of the loading of a cargo tank and after filling connections are removed, the cover plate gasket and fittings attached to the cover plate shall be tested for leakage of chlorine. This shall be done by using the aqua ammonia method.

4. The chlorine shall be unloaded by taking advantage of its vapor pressure to force the liquid out of the tank. If desired, compressed air may be used; provided it has been dried by passing it over activated aluminum oxide, silica gel, or other approved drying agent. The compressed air system shall contain a safety valve arranged and set so that the air pressure in the cargo tank cannot exceed 150 pounds per square inch gauge.

5. A diagrammatic sketch of filling and discharge systems shall be submitted when requesting approval. Complete information shall be indicated by legends shown on the sketch.

6. Alternate methods of filling or discharging the lading may be submitted for approval for use.

(j) Cargo tanks shall be examined and retested every [fol. 148] two years in the presence of an inspector of the Coast Guard. The examination shall consist of a thorough internal and external inspection. The hydrostatic test shall be at a pressure of 450 pounds per square inch. The safety valve or valves shall be retested at the time of this biennial inspection. Upon satisfactory conclusion of tests the inspector shall stamp upon the tank the date and other identification necessary to indicate authority for continued use of the cargo tanks and safety valves.

(k) Sea cocks of an approved design capable of sinking the barge in event of an emergency shall be fitted to the barge.

(l) No other kinds of cargo shall be on board the barge at the same time that chlorine in either liquid or vapor form is present in the cargo tank.

(m) The following substance shall not be used as stores on board barges transporting chlorine in bulk; Hydrogen, methane, liquefied petroleum gases, acetylene, ammonia, methyl ether, ethyl phosphine, turpentine, compounds containing such substances, metallic powders, finely divided metals or finely divided organic material.

(n) Repairs to the barge or the cargo tanks, involving the use of welding or burning equipment shall not be undertaken while chlorine in either liquid or vapor form [fol. 149] is present in the tanks.

(p) During the time chlorine cargo is laden in the tanks the barge shall be under constant surveillance. A towing vessel in transporting such barges shall not leave the barge unattended except when the barge is moored to a pier, wharf, dock or other terminal and then only if such facility is provided with normal watchman or guard service. When the barge is at the consignor's or consignee's terminal, watchman or guard service shall be provided by said consignor or consignee. Watchman or guard service normally provided for the terminal shall be deemed sufficient for the purposes of this regulation.

(q) The Interstate Commerce Commission's standard "Dangerous" placard shall be displayed in four locations on the barge when chlorine is laden in the tanks. A placard shall be posted approximately midship on each side and facing outboard. A placard shall be posted at each end of the barge at about the ends of the tanks facing outboard. Racks for mounting such placards will be so arranged as to provide clear visibility and be protected from becoming readily damaged or obscured. After unloading and before a tank or tanks are gas-freed, the placard shall be reversed to show the "Dangerous-Empty" legend.

(R. S. 4472, as amended; 46 U.S.C., 1940 ed., 170).

Commandant

[fol. 150]

UNITED STATES OF AMERICA
TREASURY DEPARTMENT
WASHINGTON

Date: Jun 5 1963

ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I certify that the annexed twelve (12) pages are a true copy of the Minutes of a meeting of the Merchant Marine Council (Hearing) on 3 June 1943, as shown in Vol. 49, Journal of Merchant Marine Council, 1943 on file in this Department.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

/s/ LUCILE HENDERSON
Chief, Directives Control and
Distributive Branch
Office of Administrative Services
Treasury Department

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UNITED STATES COAST GUARD HEADQUARTERS

MERCHANT MARINE COUNCIL

MINUTES OF A MEETING HELD

3 JUNE 1943

[fol. 153]

Pursuant to the authority of R. S. 4405, as amended, (46 U.S.C. 375) the Executive Order 9083, dated 28 February, 1942, and Reorganization Order dated 1 June, 1942—Co-020, a meeting of the Merchant Marine Council, United States Coast Guard, was duly convened in Room 2020, Coast Guard Headquarters, commencing at 10:00 A.M., 3 June, 1943, there being the following

COUNCIL MEMBERS PRESENT:

REAR ADMIRAL HARVEY F. JOHNSON, USCG, Engineer in Chief, Chairman;

CAPTAIN R. T. MERRILL, USCGR, Assistant to Chief Personnel Officer;

Commander J. A. Hirshfield, USCG, Vice Chairman;

Commander R. A. Smyth, USCGR, Executive Secretary;

COMMANDER H. T. JEWELL, USCG, Chief, Merchant Marine Personnel Division;

COMMANDER L. J. BERNARD, USCGR, Staff of Commandant;

Mr. J. R. HARRISON, Chief of Technical Staff, Merchant Marine Inspection;

LEGAL ADVISER:

COMMANDER K. S. HARRISON, USCGR, Chief Counsel

PRESENT ALSO ON BEHALF OF:

UNITED STATES COAST GUARD

Wm. T. Butler, Port Security Section

Lieut. Comdr. Merle A. Gulick, Port Security Section
[fol. 154]

CHEMICAL WARFARE SERVICE

Lt. Col., S. N. Cummings, Washington, D. C.

INTERSTATE COMMERCE COMMISSION

L. I. Doyle, Washington, D. C.

UNITED STATES ARMY

Arthur McFarland, Corps of Engineers

WAR PRODUCTION BOARD

J. N. Hall, Chemicals Division, Washington, D. C.

PITTSBURGH PLATE GLASS COMPANY

Dwight R. Means, Pittsburgh, Pa.

Frank G. Moore, Col. Chemical Division, Grant Bldg.,
Pittsburgh, Pa.

U. S. MARITIME COMMISSION

R. M. Smith, Washington, D. C.

DEFENSE PLANT CORPORATION

Max Hersh, 811 Vermont Ave., N. W., Washington, D. C.

— 1 —

NATIONAL BUREAU OF STANDARDS

E. R. Weaver, Washington, D. C.

MONSANTO CHEMICAL COMPANY

S. Cottrell, 1700 So. 2nd St., St. Louis, Missouri

THE CHLORINE INSTITUTE, INC.

Frederick E. Brown, 50 East 41st St., New York, N. Y.

Robert T. Baldwin, 50 East 41st St., New York, N. Y.

[fol. 155]

THE SOLVAY PROCESS COMPANY

R. O. Comer, Syracuse, New York

F. W. Browne, 40 Rector St., New York, N. Y.

OFFICE OF DEFENSE TRANSPORTATION

E. G. Waring, 4318, I.C.C., Washington, D. C.

MANUFACTURING CHEMISTS ASSOCIATION

Miss Sylvia L. Pacehle, 608 Woodward Bldg., Washington, D. C.

CARBIDE CARBON CHEMICALS CORP.

C. H. Beard, 30 East 42nd St., New York, N. Y.

PROCEEDINGS AND TRANSACTIONS

HEARING

Rear Admiral Johnson: The purpose of this meeting is to arrive at the answer to the problem of transporting chlorine in bulk. At the present time there is no definite rule relative to the transportation by barge except in minor cases.

I am going to ask Mr. Moore of the Pittsburgh Plate Glass Company to open the discussion.

Frank G. Moore: I am Traffic Manager of the Pittsburgh Plate Glass Company.

On May 4, 1943, we addressed to the Commandant of the United States Coast Guard, a request for permission to transport chlorine by tank barge on inland waterways.

There is at present under construction at Natrium, ap-[fol. 156] proximately nine miles north of New Martinsville, West Virginia, and located on the east bank of the Ohio River, a plant for the production of chlorine. It is a project of the Defense Plant Corporation and known as Plancor 394. The company I represent will be the lessee of that plant.

Chlorine is an essential chemical in the production of materials necessary to our war effort. Fortunately, it lends itself readily to water transportation, as this material must be shipped to various points where the consuming plants are located.

— 2 —

Water transportation, in the way we plan to use it, has certain advantages over other means of transportation. It will permit large quantities to be moved at one time. To some destinations it has the advantage of speed of transport, it is economical and it is certainly not a congested artery of transportation.

The seriousness of the tank car situation is familiar to all of us and this water method of transportation of chlorine will relieve the tank car situation, as far as this plant is concerned, to a considerable extent, so that not only is the production of the product in the interest of the war effort, but also the method of transportation here proposed.

We think the amendment to the regulations, as proposed [fol. 157] by the Coast Guard, is reasonable and practicable and we would like to see it made effective. In view of the provisions of the proposed amendment, the plans submitted with our application must be considered tentative. Detailed drawings will be submitted, after the amendment becomes effective, and in accordance with the provisions thereof.

Should the Council care to ask any questions concerning our request, we are prepared to answer them.

Rear Admiral Johnson: Thank you, Mr. Moore.

Mr. Means, have you anything to add?

Dwight R. Means: No, unless there are some questions.

Rear Admiral Johnson: Does any other gentleman wish to speak in support of this method of transportation of chlorine?

F. W. Browne: The regulations that have been proposed by the Coast Guard have been examined by our technical

people, and I wish to go on record on behalf of my company as in favor of them.

Rear Admiral Johnson: Thank you very much.

S. Cottrell: As a representative of the Monsanto Chemical Company of St. Louis, I would like to say we have examined the proposed amendments to the regulations and are in favor of them.

Rear Admiral Johnson: Thank you Mr. Cottrell.

[fol. 158] C. H. Beard: I represent the Carbide Carbon Chemicals Corporation and we are not a producer of chlorine but do consume large quantities of it. We have examined the proposed regulations and have found them satisfactory and recommend their approval.

Rear Admiral Johnson: Thank you Mr. Beard.

R. O. Comer: The change I would suggest is under paragraph (f) on page 2 which excludes the application of any clips or hangers welded or riveted directly to the shell of the tank. Now I don't recall any chlorine container that doesn't have some welding on it in the way of clips or hangers and I would suggest that we be relieved of that hardship and be permitted to weld clips or hangers provided those clips or hangers are stress relieved with the tank. My company in studying the transportation of chlorine in large tanks on barges feels that we should be permitted to provide anchorages of some sort and not be limit-

—3—

ed to things that are just simply supported on the barge without being attached thereto by welding. For instance in this application you will find that your butt straps have clips holding the strap around the end of the tank in position and these clips are welded to the tank.

Rear Admiral Johnson: Thank you Mr. Comer.

J. N. Hall: I handle transportation for the Chemicals [fol. 159] Division of the War Production Board. We have been concerned about adequate transportation for chlorine. We have increased production coming in and the tank car supply is none too good and we trust favorable considera-

tion will be given to anything that will make our transportation problem easier.

Rear Admiral Johnson: Thank you very much. Anyone else?

Frank G. Moore: I noticed from the announcement of this hearing that briefs would be permitted. May I inquire if any briefs have been submitted up to this time?

Rear Admiral Johnson: Yes, we have one that I know of at the present time.

Frank G. Moore: Would it be permissible to ask whether it is favorable to the proposed amendments?

Rear Admiral Johnson: It is favorable with certain detail criticism.

Frank G. Moore: If any briefs are filed may we request permission of the persons filing them to furnish us with copies?

Rear Admiral Johnson: We will furnish you with such information as we see is necessary.

Frank G. Moore: Thank you.

Dwight R. Means: Mr. Comer's opinion on paragraph (f), page 2, is well founded from an engineering construction standpoint. There is no objection to having clips on [fol. 160] tanks if stress relieved. I believe the general impression, at the time that the restriction was put in there, was to make it easier to check up to see whether clips were added after being put into service. Nevertheless in tank car practice, welding of lugs and anchors, etc., are applied to the tank and are stress relieved and we have had very good experience with tanks that are stress relieved and I have no objection to granting Mr. Comer's suggestion. I think maybe that regulation is a little too strict. There's a good argument on both sides.

Rear Admiral Johnson: Thank you. Col. Cummings, have you anything you would like to say?

Lt. Col. S. N. Cummings: The Chemical Warfare Service is not in a position to make recommendations for or against the transportation of chlorine in bulk but merely to state two facts: First, that the production of chlorine is on the

increase; and second, that a shortage of tank cars exists, and it would appear that this, under normal shipping conditions, would be a reasonable method of transportation.

Rear Admiral Johnson: Thank you, sir.

—4—

Arthur McFarland: The Department will interpose no objections to the proposed regulations for the transportation of chlorine in bulk.

Rear Admiral Johnson: Thank you very much.

[fol. 161] L. I. Doyle: The Interstate Commerce Commission has no objection to this form of transportation.

Rear Admiral Johnson: Thank you, sir.

Robert T. Baldwin: The Chlorine Institute has no objections to this proposal, but I want to ask Mr. Moore one question. Are the tanks to be lagged?

Frank G. Moore: The proposed regulations do not provide for lagging, Mr. Baldwin.

Rear Admiral Johnson: Mr. Brown of the Chlorine Institute, do you have anything you want to say?

Frederick E. Brown: I have no further statements to add.

Rear Admiral Johnson: Thank you, sir.

Miss Pacelle of the Manufacturing Chemists Association, have you any statement?

Miss Sylvia L. Pacelle: I'm here just as a representative of the Association, I have nothing to offer.

Rear Admiral Johnson: Thank you. Mr. Smith of the U. S. Maritime Commission.

R. M. Smith: The Commission has no comment to make excepting the clarification on page 2 under (e) by the insertion of "for access" after "sufficient space".

W. T. Butler: The provisions of that regulation follow more or less the similar provisions which we apply to the transportation of inflammable and combustible liquids [fol. 162] in bulk aboard tank vessels. The purpose of the regulation is to provide for inspectors to be able to see in and around the tanks. We do not contemplate that

there shall be sufficient access space provided or clearances to permit work to be carried on in that area. Those tanks further qualify because they can be lifted out from the barge if that becomes necessary to make major repairs to the barge structure itself or to the tank. Does that have any influence on your suggestion?

R. M. Smith: I think the intent is evident but it certainly is open for two different interpretations the way it now stands and it seems to me it should be written so that there is sufficient space provided men to make examination by passing around the objects.

W. T. Butler: We have not carried our practice in that regard as far as you suggest in the past. We have merely tried to provide sufficient free area so that inspectors could at least get in there and see for themselves the entire surface of both the vessel structure and the tank structure and not necessarily to pass along by either the tank or the structure. We may have to do it by going under and then by going above—and between the two he can make a complete and thorough coverage.

—5—

Commander Bernard: I think something should be in [fol. 163] there such as space sufficient for inspectors, or something to that effect.

W. T. Butler: Anyway, it's not major.

Rear Admiral Johnson: Mr. Waring of the Office of Defense Transportation, have you any comments to make?

E. G. Waring: There is a shortage of this particular type of tank car—in fact there is a shortage of all tank cars. But on what is known as the pressure type of tank car, very recently the Office of Defense Transportation made a request to the War Production Board for sufficient material for the construction of 250 additional tank cars. This request was denied. We are making an appeal on it but we doubt very much that we are going to get them. So the supply of tank cars is going to be a very serious situation in months to come.

Rear Admiral Johnson: Thank you, sir. Mr. Weaver of the National Bureau of Standards.

E. R. Weaver: In looking over this material I do not see that there is any limitation on the capacity of an individual unit. It seems to me there ought to be. I'm not prepared to suggest on it but I think the reasons are obvious as something may happen to one of these tanks through an accident or sabotage and we don't want too big an amount of chlorine to go at one time.

Another thing, we go into considerable detail to permit [fol. 164] chlorine to be unloaded by means of compressed air, but there is nothing said about getting the air out of the tanks before reloading. I think if you go into as much detail as you have here you should provide for getting the air out of the tanks.

Dwight R. Means: On the latter question I wish to state that the regulations state that a cargo tank shall be inspected to be sure that it is empty before being loaded. In other words it is necessary to release the air pressure before we put any chlorine in.

On the other question as to the size of the container. We gave that considerable thought and going back over the accident record of chlorine for the last ten years we can't recall any accidents, speaking of course of tank cars 16 and 30 tons single unit, except leaks, safety valve leaks, poor connection to valves and that sort of thing. In other words all the leaks consisted of trouble in that area, so if you pursue that line of reasoning, you would reduce the number of accidents by reducing the number of valves, manhole covers, and by reducing them you would have fewer accidents. The accidents on 30 ton cars have been no more severe in the last ten years than on the 16 ton cars. That's because you fix the leak before the car gets empty. Of course the number of accidents per car has been about the same on 30 ton cars and on 16 ton cars. Consequently [fol. 165] on the basis of per thousand tons of chlorine handled, the actual hazard per ton of chlorine handled has been less on 30 ton cars than on the 16 ton cars. On

the same basis it would be reasonable to expect as you go larger the risk will be reduced. On the other hand even though we assumed the severity would be twice as much on the 30 ton car as on the 16 ton car, we would still come out even but that is, not the case.

—6—

Looking at it in another way—every time an air transport fails, nearly everyone gets killed but we don't argue that should make them smaller, but we keep building them larger. Of course there is a matter of opinion, but after looking it over that's the way it looks to us.

Rear Admiral Johnson: Thank you. Mr. Hersh of Defense Plant Corporation.

Max Hersh: I've nothing to add, I just came to listen.

Rear Admiral Johnson: Mr. Baldwin, I wonder if you would tell the Council the precautions you people take generally in the transportation of chlorine.

Robert T. Baldwin: That's a large subject, sir.

Rear Admiral Johnson: You can shorten it down some, I know.

Robert T. Baldwin: I should say that the regulations [fol. 166] of the Interstate Commerce Commission have been our guide and our necessity. Those regulations, as you know, are backed up by specifications and we do not fail to meet them if for no other reason than there is a section in the regulations which says we are guilty before we are innocent. That is to say, the regulations provide that a duly authorized representative of the shipper must certify on the Bill of Lading that the tank car or container, whatever it may be, has been loaded in accordance with the regulations. That is a tough specification. Speaking for the shipper who is the producer, it is not to his interest to have an accident. We do not have to engage in the question of moral. Chlorine accidents can make the front page in any paper in the United States. I agree substantially in what Mr. Means has stated, that is to say, you cannot be absolutely sure that the quantity of chlorine

can be the measure of the danger. I am very happy to be able to say that the transportation of liquid chlorine by rail is on an increasing scale from year to year. Chlorine is not here just for now—it is here to stay. And with this increased shipping of chlorine the number of accidents does not increase materially, and again I say, we owe that to the Interstate Commerce Commission, and I hope to our own good sense.

Rear Admiral Johnson: How do you handle leaks?

[fol. 167] Robert T. Baldwin: Well, the answer is that we have a gentlemen's agreement, that the producer or shipper nearest to the accident, no matter whose chlorine may be involved, will send at once an expert to the reported accident, and we use airplanes or any other means of quick transportation. These men are reasonably expert—some highly so, and I think without exception we have managed to cure the leak. This is no job for an amateur or well-meaning person. We occasionally get into wrecks, but the stout construction of the car and of the valves, with care in filling the cars, I am happy to say we have comparatively no troubles.

Rear Admiral Johnson: Thank you very much. Is there any other gentleman in the room who has anything further to say in the matter?

R. O. Comer: It has been suggested by the Bureau of Standards' representative that there should be some limit as the size of the tank. Now I think there is a natural advantage of carrying heavy loads on barges. I think in

—7—

the end we will have some 55 ton railroad cars, these are either on order or in operation, I don't know which. That approaches the limit that can be economically carried on rails. On barges we don't have any such limitations. We [fol. 168] can carry heavy weights economically. I think it is the spirit of ICC that we should facilitate commerce—that we shouldn't stand in the way of progress. Therefore, I suggest that we do not limit the size of the tanks.

Rear Admiral Johnson: Thank you very much, Mr. Comer.

Anyone else have anything to say? Any member of the Council have any questions? If no one has anything further to say, we thank you very much for coming down here.

Briefs and comments from others not present at hearing:

June 1, 1943

The Commandant (CMC)
United States Coast Guard
1300 East Street, N.W.
Washington, D. C.

Ref: File CG-MMC 146

Your letter May 27, 1943

Dear Sir:

Sub: Transportation of Liquid
Chlorine in Bulk—by
Water Carriers

Have read request of petitioner, dated May 4th, and proposed amendment that is to be discussed at the Merchant Marine Council hearing on June 3rd.

The flood situation at St. Louis prevents by attending this meeting.

Chlorine is a very important item on the Defense Program, and its movement by water is in the interest of the war [fol. 169] effort. The proposed amendment amply provides for the factor of safety, in my judgment.

In consideration of the above, I favor the proposed amendment and the granting of permission to transport Liquid Chlorine.

Very truly yours

Jos. Streckfus,
Member Western River Panel
St. Louis, Mo.

JS:MB

DISPATCH—021705—DCGO 9TH NAVDIST—ST LOUIS
 REFER COMMANDANT PAREN CMC PAREN. LET-
 TER 27 MAY 43 FILE CG DASH MMC DASH 146 AD-
 DRESSED TO MR. DONALD WRIGHT ST LOUIS MO
 RELATING TO PROPOSAL TO PERMIT CARRIAGE
 OF LIQUID CHLORINE IN BULK IN CERTAIN
 CLASSES OF CARGO BARGES UNDER SPECIFIED
 CONDITIONS X MR. WRIGHT REQUESTED THIS
 OFFICE SEND DISPATCH IN HIS BEHALF STAT-
 ING HE CANNOT BE PRESENT AT MEETING BUT
 APPROVES REPEAT APPROVES CARRIAGE LIQ-
 UID CHLORINE AS PROPOSED

(Donald T. Wright, Mississippi Valley
 Association,
 511 Locust St., St. Louis, Missouri)

—8—

PETERSON & HAECKER, LTD.

Blair, Nebraska

May 31, 1943

Commandant, U. S. Coast Guard
 Washington, D. C.

Reference: CMC CG-MMC 146

[fol. 170] Dear Sir:

This will acknowledge receipt of your letter of May 27, 1943, relative to the hearing which is to be held at Coast Guard Headquarters on June 3 regarding the proposed amendment to regulations governing transportation of explosives on inland rivers.

I have carefully read the request of the Pittsburgh Plate Glass Company of Pittsburgh, Pa., to transport liquid chlorine on the Ohio River and other rivers emptying into the Gulf of Mexico, and also have read the text of the proposed amendment.

I wish to advise that in general I am in favor of granting this request and favor adoption of this proposed amendment. I would favor the adoption of this particular amendment at this time even though a certain amount of additional hazard might be involved.

I further state that because I am unfamiliar with the properties of liquid chlorine and the technique of its handling, I would wish to be excused from technical and detailed comment of the various paragraphs in the proposed amendment.

Yours very truly,

F. W. HAECKER

Member, Western Rivers Panel

[fol. 171]

BUREAU OF EXPLOSIVES

30 Vesey Street
New York, N. Y.

File Number

25-21

25-16-

25-16-242-25

June 1, 1943

The Commandant,
United States Coast Guard
Washington, D. C.

Attention: Rear Admiral Harvey Johnson,
Chairman, Merchant Marine Council

Dear Sir:

Receipt is acknowledged of your letter of May 27, file CG-MMC-146, with enclosures descriptive of a tank barge to be authorized for the transportation of chlorine and also proposed amendment to the regulations covering the transportation or storage of explosives or other dangerous articles or substances, and combustible liquids on board.

vessels which consists mainly of the addition of a new paragraph numbered 146.24-15.

I have reviewed the print and have no exceptions to take to the construction illustrated other than to call attention to the short length of pipe projecting below the venting valve to a point within the tank designated as gas line. Such an arrangement is not permitted on tank cars for the reason

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that once the liquid level rises beyond the bottom of this pipe, as a result of expansion of the lading, liquid will be [fol. 172] ejected should the valve be opened supposedly to vent vapor. This pipe should not be used as a means for determining the maximum load level inasmuch as it is for a fixed length and the level of the liquid for a given weight of material varies with the temperature. Hence such a pipe would only be accurate with the lading always loaded at the same temperature.

The loading diagram shown on the print represents a proper and accurate procedure to be followed to insure that the tank is never loaded in excess of 125% of the water weight capacity of each tank, which water weight capacity should be plainly stenciled on the surface of each tank in a position where it is readily visible to the loader, similar to the marking required on tank car tanks.

I further note that in paragraph 146.24-15(a), Class AA cargo barges are authorized, and as this type of barge calls for loading on deck only, I question its being a satisfactory type for the purpose contemplated. The BB barge seems to be the one represented on blue print V2098-2 and appeals to me as the most desirable design of the three classes mentioned.

I fail to find in the proposed paragraph any reference to the pressure at which the safety valves should be set to open. Possibly this requirement is covered by the regulations referred to in paragraph 146.24-15(b), copy of which I do not have in my files. In any event I recommend that the safety valves be set to open at a

pressure not in excess of 225 pounds per square inch and be of a type which will be gastight at not less than 180 pounds per square inch, the same as required for tank car equipment.

I regret that press of other matters will prevent my being present or represented at the hearing on June 3.

Yours truly,

H. A. CAMPBELL, Chief Inspector.

Copy to Mr. R. T. Baldwin,
Secy., The Chlorine Institute, Inc.,
50 East 41st St., New York, N. Y.

UNION BARGE LINE CORPORATION—
DRAVO BUILDING
PITTSBURGH, PA.

June 2, 1943

Rear Admiral Harvey F. Johnson
Chairman, Merchant Marine Council
United States Coast Guard
Washington, D. C.

Dear Admiral Johnson:

With your letter of May 27th I received copy of proposed amendment to regulations contained in part 146—“Transportation or Storage of Explosives or Other Dangerous Articles or Substances, and Combustible Liquids on Board Vessels”, Subchapter “N”, Chapter II, Title 46 [fol. 174] (Shipping) to permit the transportation of liquid chlorine.

—10—

It will not be possible for me to attend or be represented at announced hearing to be held on June 3rd, but I have today forwarded telegram to you, copy attached, advising that the proposed amendment appears to be entirely adequate and expressing the opinion that river transporta-

tion can handle the prospective movement efficiently and expeditiously, at the same time affording an opportunity to relieve over-burdened railroads of additional transportation demands.

I am happy to know that the interested shippers are anxious to use river transportation and thereby afford it an opportunity to make a further contribution to the war effort. The plan has my complete approval and endorsement.

Yours very truly,

UNION BARGE LINE CORPORATION

ALFRED S. OSBOURNE

Executive Vice President

LONGRAM

June 2, 1943

11:45

REAR ADMIRAL HARVEY F. JOHNSON
CHAIRMAN, MERCHANT MARINE COUNCIL
UNITED STATES COAST GUARD
WASHINGTON, D. C.

REFERENCE YOUR LETTER MAY 27 FILE CG-MMC-[fol. 175] 146, PROPOSED REVISION PART 146 SUB-CHAPTER N CHAPTER TWO TITLE 46 TO PERMIT TRANSPORTATION OF LIQUID CHLORINE IN BULK VIA RIVER BARGE APPEARS TO ENTIRELY ADEQUATE AND WE RECOMMEND ADOPTION. THIS TONNAGE CAN BE HANDLED EFFICIENTLY AND EXPEDITIOUSLY VIA RIVER AND THEREBY RELIEVE OVERBURDENED RAILROADS OF THIS TRAFFIC

UNION BARGE LINE CORPORATION

ALFRED S. OSBOURNE

Executive Vice President :

Meeting adjourned at 10:45 A.M., 3 June, 1943.

UNITED STATES OF AMERICA
TREASURY DEPARTMENT
WASHINGTON

Date: Jun 5 1963

To ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I certify that the annexed five (5) pages are a true copy of pages 1, 8, 9, 10, and 11 of Minutes of Meeting of Merchant Marine Council on 9 June 1943, relative transportation of liquid chlorine in bulk, as shown in Vol. 49, Journal of Merchant Marine Council, 1943 on file in this Department.

IN WITNESS WHEREOF, I have hereunto set my hand, [fol. 176] and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

/s/ LUCILE HENDERSON
Chief, Directives Control and
Distributive Branch
Office of Administrative Services
Treasury Department

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9 June, 1943

800-33

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[fol. 177]

UNITED STATES COAST GUARD
HEADQUARTERS
MERCHANT MARINE COUNCIL
MINUTES OF A MEETING HELD
9 JUNE, 1943

Pursuant to the authority of R. S. 4405, as amended, (46 U.S.C. 375) and Executive Order 9083, dated 28 February, 1942, and Reorganization Order dated 1 June, 1942—CO-020, a meeting of the Merchant Marine Council, United States Coast Guard, was duly convened in Room 5202, Coast Guard Headquarters, commencing at 10:00 A.M., 9 June, 1943, there being the following

COUNCIL MEMBERS PRESENT:

REAR ADMIRAL HARVEY F. JOHNSON, USCG, Engineer in Chief, Chairman;

CAPTAIN R. T. MERRILL, USGGR, Assistant to Chief Personnel Officer;

CAPTAIN J. N. HEINER, USCG, Chief, Naval Engineering Division;

CAPTAIN H. C. SHEPHEARD, USCGR, Chief, Merchant Marine Inspection Division;

COMMANDER J. A. HIRSHFIELD, USCG, Vice-Chairman;

COMMANDER H. T. JEWELL, USCG., Chief, Merchant Marine Personnel Division;

COMMANDER R. A. SMYTH, USCGR, Executive Secretary;

COMMANDER L. J. BERNARD, USCGR, Staff of Commandant;

MR. J. R. HARRISON, Chief of Technical Staff, Merchant [fol. 178] Marine Inspection;

LEGAL ADVISER:

CAPTAIN K. S. HARRISON, USCGR, Chief Counsel

PRESENT ALSO:

Mr. H. W. Jackson, War Shipping Administration

Mr. John N. Mason, War Shipping Administration

Mr. F. J. Zito, War Shipping Administration

—1—

MMC-146 TITLE 46—SHIPPING

CHAPTER II—Coast Guard: Inspection and Navigation

Subchapter N—Explosives or Other Dangerous Articles or Substances, and Combustible Liquids on Board Vessels

Part 146—Transportation or Storage of Explosives or Other Dangerous Articles or Substances, and Combustible Liquids on Board Vessels.

Part 146 is amended by adding the following:

146.24-15 *Liquid chlorine in bulk.* (a) Liquid chlorine may be transported in bulk on board Class "AA", "BB", or "BC" cargo barges when loaded in Class I fusion-welded steel tanks (pressure vessel type) independent of the structure of the vessel.

(b)(1) New or existing barges proposed to be used for the transportation of chlorine in bulk shall be approved. [fol. 179] Detail plans showing the design and construction of the barges shall be submitted for such approval. An approved barge shall be maintained in accordance with the provisions of the initial approval, normal wear and wastage excepted. Failure to maintain such physical condition may result in the withdrawal of said approval.

(b)(2) Tanks shall be fabricated, constructed and tested in accordance with the applicable provisions of the regulations entitled "Marine Engineering Regulations and Material Specifications" of the U. S. Coast Guard. (46 CFR Parts 50 to 58, incl.) In addition to other markings required to be shown upon the tank, the water capacity of the tank in pounds shall also be stamped and stenciled thereon. Plans shall be submitted when requesting approval.

(c) Tanks shall be designed for an allowable working pressure of not less than 300 pounds per square inch and the safety valves shall be set at the maximum allowable working pressure of the tank. Each tank shall be provided with a manhole nozzle and cover on top of the tank of sufficient diameter to permit access to the interior of the tank and to provide for the proper mounting of venting, loading, unloading and safety valves. Other openings in the tank are prohibited.

[fol. 180] (d) A protective housing of approved design shall be provided over the manhole cover and the valves and other openings in said cover, and so constructed as to provide that any leakage of the lading occurring around the cover, valves, gaskets, safety devices, etc., can readily be discharged into the water alongside the barge.

(e) Independent tanks shall be so fitted on board the barge as to provide sufficient space for visual inspection around the tanks and any adjacent fixed structural part of the barge, or in lieu thereof the installation shall be such as to make it practicable to move said tanks for the inspection of the structure of the barge and the tanks.

(f) The design indicative of the manner in which the tanks are to be installed, supported, and secured on board

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the barge shall be approved prior to installation. Tanks shall be supported in steel cradles and secured in place by means of base anchorages or steel bands. No appendages

shall be welded to a tank after said tank has been stress relieved.

(g) The maximum weight of chlorine loaded into a tank shall not exceed 1.25 times the fresh water capacity of [fol. 181], the tank. When more than one tank is installed in a barge, said tanks shall not be interconnected, either directly or by a manifold. When a tank is being filled or discharged no other of the barge's cargo tanks shall be connected to said filling or discharge line. Filling and discharge pipe connections shall be kept disconnected at the cargo tank, except when actually loading or unloading the lading of the cargo tank and the outlet valves on the tank shall, when the filling or discharge line is disconnected, be completely plugged or blanked off.

(h) Because of the importance of the requirement that tanks shall not be loaded with chlorine in excess of 1.25 times the water capacity (weight basis) the following procedure is required to be followed:

(1) The cargo tank to be filled shall be inspected to insure that it is empty and free from foreign matter. After being again made tight the tank shall be evacuated to at least 20 inches of mercury and then loaded with chlorine through a direct pipe line from a shore tank that is mounted on scales so that a predetermined weighted amount of chlorine is loaded into a cargo tank on board the barge. Any vapor vented during the loading operation shall be ignored in calculating the safe carrying capacity of the cargo tank.

(2) After the loading operation is completed the vapor above the liquid chlorine shall be analyzed and if it should [fol. 182] contain less than 80% chlorine, vapors shall be withdrawn through the vent line until the vapor content in the cargo tank shows at least 80% chlorine. The arsenious oxide or the potassium iodide methods of analysis shall be used in determining the percentage of chlorine in the vapor.

3. Upon completion of the loading of a cargo tank and after filling connections are removed, the cover plate gasket and fittings attached to the cover plate shall be tested for leakage of chlorine. This shall be done by using the aqua ammonia method.

4. The chlorine shall be unloaded by taking advantage of its vapor pressure to force the liquid out of the tank. If desired, compressed air may be used, provided it has been dried by passing it over activated aluminum oxide, silica gel, or other approved drying agent. The compressed air system shall contain a safety valve arranged and set so that the air pressure in the cargo tank cannot exceed 150 pounds per square inch gauge.

5. A flexible metal connection, of a design to be approved, shall be fitted in each filling discharge, and return pipe line to compensate for movement of the barge during the operation of filling or discharge.

6. A diagrammatic sketch of filling and discharge systems shall be submitted when requesting approval. Complete information shall be indicated by legends shown on [fol. 183] the sketch.

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7. Alternate methods of filling or discharging the lading may be submitted for approval for use.

(j) Cargo tanks shall be examined and retested every two years in the presence of an inspector of the Coast Guard. The examination shall consist of a thorough internal and external inspection. The hydrostatic test shall be at a pressure of 450 pounds per square inch. The safety valve or valves shall be dismantled, overhauled, and reset at the time of this biennial inspection. Upon satisfactory conclusion of tests the inspector shall stamp upon the tank the date and other identification necessary to indicate authority to continued use of the cargo tanks and safety valves.

(k) Sea cocks of an approved design for the purpose of sinking the barge in event of an emergency shall be fitted on Class "BB" or "BC" barges.

(l) No other kinds of cargo shall be on board the barge at the same time that chlorine in either liquid or vapor form is present in the cargo tank.

(m) The following substances shall not be used as stores on board barges transporting chlorine in bulk: Hydrogen, methane, liquefied petroleum gases, acetylene, ammonia, methyl ether, ethyl phosphine, turpentine, compounds containing such substances, metallic powders, finely divided [fol. 184] metals or finely divided organic material.

(n) Repairs involving the use of welding or burning equipment shall not be undertaken on the barge while chlorine in either liquid or vapor form is present in the tanks, except in an emergency involving the safety of the barge.

(o) During the time chlorine cargo is laden in the tanks the barge shall be under constant surveillance. A towing vessel engaged in transporting such barges shall not leave the barge unattended except when the barge is moored at a pier, wharf, dock or other terminal and then only if such facility is provided with watchman or guard service. When the barge is at the consignor's or consignee's terminal, watchman or guard service shall be provided by said consignor or consignee.

(p) The Interstate Commerce Commission's standard "Dangerous" placard shall be displayed in four locations on the barge when chlorine is laden in the tanks. A placard shall be posted approximately midship on each side and facing outboard. A placard shall be posted at each end of the barge at about the ends of the tanks facing outboard. Racks for mounting such placards will be so arranged as to provide clear visibility and be protected from becoming readily damaged or obscured. After unloading

and before a tank or tanks are gasfreed, the placard shall be reversed to show the "Dangerous-Empty" legend.

[fol. 185] (q) The word "approved" when used in Section 146.24-15 shall mean approved by the Commandant, U. S. Coast Guard.

(R.S. 4472, as amended; 46 U.S.C., 1940 ed., 170); (E.O. 9083, February 28, 1942, 7 F.R. 1609).

Commandant

—10—

REPORT

File No. MMC-146
17 June, 1943

Subject: Proposed Amendment to Part 146—Section 146.24-15 "Transportation of Liquid Chlorine in Bulk".

Reference: Minutes MMC—3 June, 1943, pages 1 to 11 inclusive (Hearing) and pages 4 to 6 (Executive Session).

Attachment: Revised draft of subject matter.

The Council having reviewed the revised draft of Section 146.24-15, Part 146, Sub-Chapter N, Chapter II, Title 46—Shipping, is of the opinion that the transportation of liquid chlorine in bulk is feasible and that the procedure to be established governing the safe handling of this product as set forth in attachment is in order. Therefore it is recommended that the Commandant approve the subject amendment.

HARVEY F. JOHNSON, Chairman

[fol. 186] R. A. SMYTH, Executive Secretary

Rear Admiral Johnson: Has the Council been able to digest this regulation relative to the transportation of chlorine?

Action: The proposed amendment approved.

MMC-43-48 Load Lines

Rear Admiral Johnson: The next thing is the committee report on the Load Line Manual.

Commander Smyth: They have made some editorial changes in the wording but not in the text proper.

Commander Bernard: There was one minor change. The manual required a report of inspection to come into Headquarters even though no violation was found. We don't see any reason for that to come into Headquarters.

Action: Tabled.

MMC-141 Manning SS AVALON

Rear Admiral Johnson: We have a letter from Mr. Knight of War Shipping Administration on May 27, 1943, and we have another here now on June 9, 1943, in connection with manning the AVALON. They are running it as a training boat. Once in a while they carry some passengers and some freight and express. They are writing for a complete waiver of any of the requirements relative to the manning of this boat. We made a decision once.

Commander Hirshfield: What was the answer?

[fol. 187] Rear Admiral Johnson: No. That was our decision and now he has asked for a reconsideration of our decision. I really think that consideration should be given to it from both sides as to their story and as to our story. Unless the Council has other ideas let's take the whole thing and review it—all of us.

Action: All members to review the case

IN UNITED STATES DISTRICT COURT

Number 668

MOTION FOR LEAVE TO AMEND LIBEL TO ADD WYANDOTTE
CHEMICAL CORPORATION AS AN ADDITIONAL PARTY RESPON-
DENT—Filed July 16, 1963

Libelant respectfully moves this Court for an order per-
mitting it to amend its libel to add as an additional party
respondent, the parent corporation to the Wyandotte
Transportation Company which has already been sued in
that name and has appeared in this case. This parent cor-
poration, Wyandotte Chemical Corporation, organized
under the laws of the State of Michigan and doing business
within this district with offices at 244 Peachtree Boulevard,
Baton Rouge, Louisiana, was the bareboat or demise char-
[fol. 188] terer of the barge WYCHEM 112 from its wholly
owned subsidiary, Wyandotte Transportation Company,
according to briefs filed by the subsidiary company. Both
the registered title owner and the bareboat charterer or
owner *pro haec vice* should be before the Court, and in
view of the identity of corporate structure no prejudice
would result in suing Wyandotte under both corporate
names.

Louis C. LaCour by United States Attorney, Walter
F. Gemeinhardt.

IN UNITED STATES DISTRICT COURT

Number 667

MOTION OF RESPONDENTS FOR SUMMARY JUDGMENT—
Filed November 13, 1963

Now Into Court come Cargill, Inc., Cargo Carriers, Inc.,
Inland Rivers Transportation Co., Jeffersonville Boat and
Machine Co., Continental Insurance Co., and Travelers
Insurance Co., respondents herein, and move the Court
to enter summary judgment in their favor in accordance
[fol. 189] with the provisions of Rule 58 of the Admiralty

Rules of the Supreme Court of the United States on the ground that the pleadings show that respondents are entitled to a summary judgment as a matter of law.

New Orleans, Louisiana, November 13, 1963.

Phelps, Dunbar, Marks, Claverie & Sims and Taylor,
Porter, Brooks, Fuller & Phillips, By: Tom F.
Phillips, Proctor for Respondents, P. O. Drawer
2471, Baton Rouge, Louisiana.

IN UNITED STATES DISTRICT COURT

Number 667 and Number 668

MINUTE ENTRY OF ORDER JANUARY 8, 1964

WEST, J.

Pre-trial conference was held this day.

It Is Ordered that these cases, Admiralty No. 667 and Admiralty No. 668, be, and they are hereby consolidated for the purpose of determination of pending motions.

It Is Further Ordered that the United States shall have until January 17, 1964, to file briefs in connection with pending motions, and that all respondents shall have an additional ten (10) days thereafter to file reply briefs.

[fol. 190] It Is Further Ordered that on January 28, 1964, all motions pending in these consolidated cases will be considered submitted to the Court for determination on the records as they then stand.

E.G.W.

IN UNITED STATES DISTRICT COURT
MINUTE ENTRY OF ORDER—June 30, 1964

Numbers 667 and 668

WEST, J.

These two cases have been consolidated for disposition by this Court on the various motions for summary judgment filed by all respondents in both cases. After pre-trial conference, it was agreed by all parties in both suits that these matters would be submitted to the Court for decision on briefs to be filed, and that disposition of these cases would await the disposition by the United States Supreme Court of a similar matter presented in the case of *United States of America v. Bethlehem Steel Corporation, et al*, 319 F. 2d 512, which was before that Court on an application for writ of certiorari.

The Bethlehem Steel case having now been disposed of, and after due consideration by this Court of the records in these cases, together with the extensive briefs and exhibits filed by all counsel.

It Is Ordered that the motions filed by each respondent in both cases for summary judgment in their favor be, and they are hereby Granted, and these suits will be, accord-[fol. 191] ingly, be dismissed at plaintiff's cost.

Reasons

These cases involve the question of whether or not the United States of America may recover damages from the owners and operators of vessels which have been sunk in a navigable stream with or without the negligence of the owners and operators thereof, and subsequently removed from the navigable stream by the United States Government and at its expense.

This Court is unable to find any authority of any kind which would support the proposition that the Government, under these circumstances, has a right to recover the cost of raising such vessels from the owners or operators there-

of. The jurisprudence is clear and unequivocal to the effect that the only right in such a case that the United States Government has to recover its expenses is a right in rem against the vessels themselves. There is no right in personam against the owners of the vessels where the owners of the vessels have abandoned them to the Government. In the instant case, the vessels involved were abandoned and the Government did, in fact, acknowledge and accept the abandonment by attaching, seizing, and selling the vessels and their cargoes when raised from the bottom of the Mississippi River. Thus, the Government had the benefit of and has exercised completely its right, in rem, of recovery [fol. 192] and it has no further right of recovery against the owners of the vessels. *Willamette Iron Bridge Co. v. Hatch*, 125 U. S. 1, 8 S. Ct. 811 (1888); *Loud v. U. S.*, 286 F. 56 (CA 6 1923); *The Manhattan*, 10 F. Supp. 45, Aff. 85 F. 2d 427 (CA 3 1936); *U. S. v. The Bessemer*, 300 U. S. 654, 57 S. Ct. 432; *Zubik v. U. S.*, 190 F. 2d 278 (CA 3 1951); *U. S. v. Zubik*, 295 F. 2d 53 (CA 3 1961); *U. S. v. Bethlehem Steel Corp., et al*, 319 F. 2d 512 (CA 9 1963); 33 U. S. C. A. 409, et seq.

E.G.W.

IN UNITED STATES DISTRICT COURT

Number 667 and Number 668

JUDGMENT—Entered June 30, 1964

For written reasons assigned and filed herein on June 30, 1964:

It Is Ordered, Adjudged and Decreed that there be a judgment herein in favor of all respondents, and against the plaintiff, dismissing these suits at plaintiff's cost.

Baton Rouge, Louisiana, June 30, 1964.

E. Gordon West, United States District Judge.

[fol. 193]

IN UNITED STATES DISTRICT COURT

Numbers 667 and 668

NOTICE OF APPEAL—Filed September 22, 1964

Notice is hereby given that the United States of America, libelant herein, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the final judgment entered in this action on June 30, 1964.

Walter F. Gemeinhardt, First Assistant United States Attorney.

Appellant's Designation of Record for Reproduction—
Filed December 23, 1964 (omitted in printing).

[fol. 196] Counter-Designation of Record on Behalf of
Union Barge Line Corporation, Appellee—Filed December
31, 1964 (omitted in printing).

[fol. 197] Counter-Designation of Record on Behalf of
Wyandotte Transportation Company, Appellee (omitted in
printing).

[fol. 198]

IN UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 22148

UNITED STATES OF AMERICA

versus

CARGILL, INC., et al.

UNITED STATES OF AMERICA

versus

2,220,000 POUNDS CHLORINE CARGO EX BARGE WYCHEM 112
AND CONTAINERS IN REM AND UNION CARBIDE CORP., et al.,
in personam.

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—
February 8, 1966

On this day this cause was called, and after argument by Martin Jacobs, Attorney, Department of Justice for Appellant; and by Lucian Y. Ray for Wyandotte Transportation Co.; George B. Matthews, Attorney for Union Barge Lines; Robert B. Acomb, Jr., Attorney for Union Carbide Corp.; and Tom F. Phillips, Attorney for Cargill, Inc.; appellees, was submitted to the Court..

[fol. 199]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 22148

UNITED STATES OF AMERICA, Appellant,

versus

CARGILL, INC., et al., Appellees.

UNITED STATES OF AMERICA, Appellant,

versus

2,220,000 POUNDS CHLORINE CARGO EX BARGE WYCHEM 112
AND CONTAINERS IN REM AND UNION CARBIDE CORP., et al.,
in personam, Appellees.

Appeals from the United States District Court for the
Eastern District of Louisiana

OPINION—July 13, 1966

[fol. 200] Before Rives and Gewin, Circuit Judges, and
Allgood, District Judge.

Gewin, Circuit Judge: This is an appeal from the judgment of the United States District Court for the Eastern District of Louisiana in two admiralty cases involving the question of whether one, who by his alleged acts of neg-

ligence causes a vessel to sink and obstruct navigation in inland waterways, may abandon the vessel without incurring liability for either its removal or cost of removal. The cases were consolidated¹ by the District Court for disposition of the motions for summary judgment filed by all defendants in both cases pursuant to Rule 58(b) of the Supreme Court Admiralty Rules. The motions for summary judgment were granted and the suits dismissed.

In *United States v. Cargill*, two barges, M 65, owned by Jeffersonville Boat and Machine Corp., and L 1, owned by Cargo Carriers, Inc., were moored by a tug at the Cargill fleet mooring at Jackson's Landing, Mile 227.5 above Head of Passes, Baton Rouge, Louisiana, on March 30, 1961. At approximately 3:32 A.M. on March 31, 1961, the super-[fol. 201] tanker *Esso Zurich* bound upriver for Baton Rouge collided with and sunk an unmanned and unlighted barge, which was drifting in the channel. The incident was reported by radio to the barge fleet at Baton Rouge and the two barges, M 65 and L 1, were discovered missing. Although only one barge, believed to be the L 1, was located and showed marks of a collision, both barges, L 1 and M 65, were reported by Cargo Carriers, Inc. as sunk. Cargo Carriers, Inc. then marked the barges for day and night navigation. On April 9, 20, and 26, 1962, Inland Rivers Transportation Co. and Cargo Carriers, Inc. wired the District Engineers that they had abandoned the Barges, L 1 and M 65, and considered the Government the owner of the vessels. The United States by return wires refused

¹ In the case of *United States v. Cargill, et al.*, involving sunken barges L 1 and M 65 the parties defendant are the owners, managers, charterers, and insurers. These barges have not been removed. In the case of *United States v. Wyandotte Transportation Co., et al.*, involving the barge *Wychem 112* the parties defendant are the owner of the chlorine cargo, Union Carbide Corporation; the owner of the *Wychem 112*, Wyandotte Transportation Co.; and the owner of the tugboat which was moving the *Wychem 112*, Union Barge Line Corporation. The chlorine tanks on the *Wychem* had been removed from the water when the litigation commenced.

to accept abandonment and responsibility for marking and removing the wrecks. The United States then brought suit against the owners, managers and charterers of the barges alleging negligence in the condition and mooring of the barges, to have the defendants decreed the owners of the wrecked barges and liable for their removal.

The facts in the second case, *United States v. Wychem*, are somewhat more dramatic. On March 15-17, 1961, the tanks of the barge, Wychem 112, a liquid chlorine barge, were each filled at Geismar, Louisiana, with 555,000 pounds of chlorine gas to be delivered to Union Carbide Corporation at South Charleston, West Virginia. The barge, owned by Wyandotte Transportation Co., was taken in tow on March 21, 1961, by the towboat Eastern, owned and operated by Union Barge Line Corp. The barge, Wychem 112, [fol. 202] was in the fourth and last tier of the four tiers of barges of the tow which kept the chlorine barge under easy observation from the towboat. At Baton Rouge the Wychem 112 was placed in the first tier away from direct observation of the towboat's pilothouse and in a position where it would bear the brunt of the weather. On March 23, 1961, with weather and visibility good but with a strong current the Wychem 112 began to dive and it sank near Vidalia, Louisiana, in the Mississippi River. Effort was made by the owners and operators of the barge in the fall of 1961 to locate and raise the cargo. Two objects were located, either of which could have been the wreck, both under hard packed sand. In November 1961 it was determined that further efforts would be unsuccessful and the owners tendered abandonment to the Government. Thereafter, the Government began a study of the extent and potential danger of the chlorine. In July 1962 technical opinions were issued to the effect that as long as the barge remained in the river it was a potential hazard in that a leak could develop at any time and recommendations were made to raise the chlorine tanks. The Government informed Wyandotte that it accepted abandonment and would proceed

with removal under Section 19 of the Rivers and Harbors Act of 1899.² In view of the Government's opinion that [fol. 203] the chlorine constituted a hazard to public health and safety, the President on October 10, 1962, proclaimed it a major disaster. The tanks were removed at a cost of approximately \$3,081,000 with the concerted effort of civil defense, public health and state authorities.³ The United States then brought suit against the cargo, shippers, carriers and consignee, alleging negligence in the construction, condition and towing of the barge to recover the costs of removal.⁴ Upon motion of the United States, the District Court ordered the sale of the chlorine cargo and containers which had been seized by the marshal at the commencement of the suit and the proceeds paid into court pending final disposition of the litigation.

The question brought before us in both of these cases is whether one may abandon with impunity an allegedly negligently sunk vessel which obstructs navigation or may the Government compel the negligent party to remove it or pay the cost of removal.

Appellant contends that under both the Rivers and Harbors Act of 1899, and under the federal common law of abatement of public nuisances, those responsible for the negligent sinking of a vessel in a navigable channel have

² In the case of the Wychem the record indicates a possible conflict of evidence on the question of whether the Government accepted the abandonment. The trial court concluded that there was an abandonment and that the Government acknowledged and accepted the abandonment by attaching, seizing and selling the vessel, tanks and cargoes when raised from the river. As will be seen later a determination of the question of abandonment is not necessary to our decision.

³ For an interesting account of the sinking of the barge, Wychem 112, and the raising of the chlorine containers, see Fales, "Time Bombs in the Mississippi," *Popular Science Monthly*, April 1963.

Of the total sum spent, \$1,565,000 was for engineering expense. The remaining \$1,516,000 was for public health and safety expense, which included precautions against hazards resulting from a possible rupture of the chlorine tanks during their removal.

[fol. 204] a duty to remove the vessel or reimburse the United States if it conducts the removal operation. It is contended by the appellees that Section 15 of the Rivers and Harbors Act of 1899 gives the owner of a sunken vessel the right to abandon it and that Section 19 of the Act, which gives the Government the right to remove abandoned sunken vessels and proclaims the Government the owner of the vessels and proceeds of their sale, is the sole and exclusive remedy of the United States pertaining to the removal of such vessels from inland waterways.

Congressional action concerning the problem of abandoned craft in the navigable waters of the United States began with the passage of the River and Harbor Act of 1880, 21 Stat. 180 et seq. Section 4, 21 Stat. 197, provided that when a sunken vessel obstructed navigation and was not removed "as soon as practicable," the vessel would be deemed abandoned and subject to removal by the Government. Two years later Congress enlarged the power of the Government granted in the 1880 Act by authorizing the sale of such sunken vessels before their removal.⁴ In 1890 Congress enacted additional legislation⁵ which contained two relevant provisions. Section 8, 26 Stat. 454, provided that if a wrecked vessel remained longer than two months it could be removed by the Government; and Section 10, 26 Stat. 455, prohibited the "creation of any [fol. 205] obstruction, not affirmatively authorized by law, to the navigable capacity of any waters," and authorized the issuance of an injunction to compel the removal of such obstructions. Apparently the thrust of these statutes was to explicitly permit the Government to rid channels of abandoned vessels and also to make it clear that obstruction of navigation was unlawful. This is borne out in *United States v. Hall*, 63 F. 472 (1 Cir. 1894), where

⁴ River and Harbor Act of 1882, 22 Stat. 191, 208-209.

⁵ River and Harbor Act of 1890, 26 Stat. 426 et seq.

the Government brought an action to compel the removal of a wilfully abandoned and sunk vessel which obstructed navigation. The court held that vessels were obstructions within the meaning of Section 10 of the 1890 Act and ordered the defendant to remove them. Thus, the court did not interpret those portions of the various acts, which gave the Government the right to remove and sell abandoned vessels, to mean that an abandoned sunken vessel was not an obstruction prohibited by Section 10 of the Act.

Finally, in 1899 Congress enacted the Rivers and Harbors Act⁶ involved in the present litigation. The purpose of this legislation was to codify the existing laws relating to navigable waters and House Conferees stated it made no essential changes in the existing law.⁷ Since the *Hall* case was part of the existing law, it assumes great importance in making a final decision concerning the application of the various sections of the Act.

[fol. 206] Those sections of the 1899 Act with which we are concerned are as follows:

Section 10:⁸ The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures . . . except on plans recommended by the Chief of Engineer and authorized by the Secretary of the Army;

Section 12:⁹ Every person and every corporation that shall violate any of the provisions of sections 9, 10 and 11 . . . shall be deemed guilty of a misdemeanor,

⁶ 30 Stat. 1121 et seq., as amended, 33 U.S.C. 401 et seq.

⁷ 32 Cong. Rec., 2296-2298; 32 Cong. Rec. pt. 3, 2923.

⁸ 30 Stat. 1151, 33 U.S.C. 403.

⁹ 30 Stat. 1151, 33 U.S.C. 406.

and on conviction thereof shall be punished by a fine not exceeding, \$2,500 nor less than \$500, or by imprisonment not exceeding one year And further, the removal of any structures or parts of structures erected in violation of the provisions of the said sections may be enforced by the injunction

Section 15:¹⁰ It shall not be lawful to . . . voluntarily or carelessly sink, or permit or cause to be sunk, vessels or other craft in navigable channels; And whenever a vessel, raft, or other craft is wrecked and [fol. 207] sunk in a navigable channel, accidentally or otherwise, it shall be the duty of the owner of such sunken craft to immediately mark it . . . and maintain such marks until the sunken craft is removed or abandoned . . . and it shall be the duty of the owner of such sunken craft to commence the immediate removal . . . and failure to do so shall be considered as an abandonment of such craft, and subject the same to removal by the United States

Section 16:¹¹ Every person and every corporation that shall violate . . . sections 13, 14 and 15 of this title shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding, \$2,500 nor less than \$500, or by imprisonment for not less than 30 days nor more than one year

Section 19:¹² Whenever the navigation of any river . . . shall be obstructed or endangered by any sunken vessel . . . and such obstruction has existed for a longer period than 30 days, or whenever the abandonment of such obstruction can be legally established in a less space of time, the sunken vessel . . . shall be subject to be broken up, removed, sold or otherwise disposed

¹⁰ 30 Stat. 1152, 33 U.S.C. 409.

¹¹ 30 Stat. 1153, 33 U.S.C. 411.

¹² 30 Stat. 1154, 33 U.S.C. 414.

of by the Secretary of the Army at his discretion
 [fol. 208] That any money received from the sale of
 such wreck . . . shall be covered into the Treasury of
 the United States.

It has been argued that the only portions of the Act quoted above which are applicable to sunken vessels are Sections 15, 16 and 19. The obstruction of navigable waters by sunken vessels and the right of the Government to remove these abandoned sunken vessels is given separate and distinct treatment in the Act apart from all other obstructions, thus vessels have been removed from the ambit of Sections 10 and 12. In addition, the earlier Acts which formed the basis of the 1899 Act had no provisions similar to Section 15 of the 1899 Act prohibiting the voluntary and careless sinking of craft in navigable waters, therefore Congress was explicitly treating vessels *in toto* in a section entirely apart from all other prohibitions. The Act further provides a separate criminal penalty for the violation of Section 15 as well as conferring upon the Government all rights of ownership in an abandoned vessel, thus other civil remedies provided by the Act for violation of other sections are inapplicable. Therefore, according to the argument, ignoring Sections 10 and 12 and reading the remaining sections literally, one with impunity can sink and abandon a vessel and incur only the loss of such abandoned vessel plus the possible imposition of the criminal penalties if the sinking occurred voluntarily or carelessly.

[fol. 209] Although the statutory language is subject to an interpretation as the foregoing suggests, it is not atune with the legislative history or logical common sense. The history of the various acts demonstrates an intent of Congress to provide a method of government removal of vessels, not to limit the liability of those causing the sinking. It is illogical to conclude that a vessel is not an obstruction solely because it is given separate treatment. *Hall* bears

this out. When that case was decided, provisions for the abandonment and removal of sunken vessels were in existence, but nevertheless the court found that a vessel was still an obstruction. Also, the introduction of the prohibition of Section 15, "unlawful to voluntarily or carelessly sink" seems more likely to be just an emphatic restatement of the Section 10 prohibition against creating an obstruction, and not an effort to remove sunken vessels from the reach of Section 10. In addition, the imposition of a separate criminal penalty along with giving the Government the right to remove and sell the abandoned vessel does not preclude a vessel from being an obstruction.

It has also been argued that even though a vessel is properly an obstruction, the injunction remedy of Section 12 is not applicable to obstructions but just to structures which are separately listed in the various sections. This we think is reading out of a statute what Congress clearly meant to include. There is no reason to limit the injunction to the items which must be built by approval from the Government [fol. 210] ment to the exclusion of obstructions which is the *primary* prohibition of Section 10. The prohibition is directed to "the creation of *any* obstruction" and is not limited to obstructions which are *created* in a peculiar or particular manner.

In addition, the statutes do not specifically authorize a suit by the Government for the recovery of removal expenses. This we think is implied. It is illogical to reason that the Government having been given the right to remove is penalized for exercising its right, and in order to gain full benefit from the statutory provisions must wait for the slower injunctive process. The right to recover *in rem* from the vessel so removed flows from ownership of the vessel and does not preclude recovery of reasonable removal costs from a tortfeasor.

Our reading of the statutes now needs to be considered in light of the cases decided under the Act. Unfortunately, they are inconclusive and at best have muddied the waters surrounding the sunken vessels.

Several cases, *Loud v. United States*, 286 F. 56 (6 Cir. 1923); *The Manhattan*, 10 F. Supp. 45 (D.C. Pa. 1935), aff'd. 85 F.2d 427 (3 Cir. 1935), cert. denied, sub nom. *United States v. The Bessemer*, 300 U.S. 654 (1937); *In re Eastern Transportation Co.*, 102 F. Supp. 913 (D.C. Md.), aff'd. sub nom. *Ottenheimer v. Whitaker*, 198 F.2d 289 (4 Cir. 1952); *United States v. Bethlehem Steel Corp. (The Texmar)*, 319 F.2d 512 (9 Cir. 1963), have concluded that [fol. 211] the Sections 10 and 12 are not applicable to sunken vessels. In *Loud* the United States brought an action to recover the amount expended in straightening a sunken vessel in a navigable channel. The sunken barge, owned by Loud, had collided with an abutment and sunk, thus obstructing navigation. The Government after straightening the vessel surrendered it to the owner. The court denied recovery and held that the United States only had a claim against the vessel which it lost by voluntarily surrendering ownership. Significant here is the fact that there were no claims of negligence on the part of Loud, therefore, it may be assumed the collision and sinking were neither the result of wilfulness nor carelessness on the part of Loud. That being true, the case is correctly decided in that Loud has not violated any provision of the Act subjecting him to liability. In the *Manhattan* the Government raised its sunken dredge and sought reimbursement from those responsible for its sinking. The court in deciding against the Government considered only the sections of the Act pertaining to the sinking and abandonment of the vessel, and found nothing in the statute allowing the Government to recover from a tortfeasor. The *Ottenheimer* case presented the court with the question of whether the owner of floating barges could abandon them in navigable waters and allow them to sink. The court concluded that despite the forceful opinion of the *Hall* case a vessel was not a structure within the meaning of Sections 10 and 12. Hence it decided the case under Section 15 and concluded that an owner could only abandon a vessel by virtue of "fire, storm, col-[fol. 212] lision or unforeseen unseaworthiness." Since

this abandonment was wilful and not one of the above, the court ordered the owners to remove the floating barge. In the *Texmar* case, which is factually similar to the present case, the Government raised an allegedly negligently sunk vessel and sought reimbursement. While admitting the statutes were confusing, the court concluded that sunk vessels were treated outside Section 10; and since Section 15 limited itself to criminal penalties and Section 19 gave the Government the right to recover against the vessel, the Government had no claim. The dissent in the *Texmar* case took the other approach. The removal provisions are not a substitute for Section 10 but the prohibition of Section 10 applies also to vessels.

The line of reasoning in the *Texmar* dissent is demonstrated in several cases, *United States v. Bridgeport Towing Line Inc.*, 15 F.2d 240 (D.C. Conn. 1926); *United States v. Wilson*, 235 F.2d 251 (2 Cir. 1956); *United States v. Zubick*, 295 F.2d 53 (3 Cir. 1961). In *Bridgeport* a craft, during salvage operations slipped and sank due to the negligence of the defendants, resulting in an obstruction to navigable waters. The Government sued for an injunction under Section 12 to compel the owners to remove the craft. The court, while holding that the provisions of Sections 10 and 12 are applicable to the facts presented, denied relief on the ground that the prohibition against the creation of obstructions meant only a prohibition against the wilful, [fol. 213] not negligent, creation of navigable obstructions. The *Wilson* case held that a sunken barge was properly an obstruction under Section 10 but the injunction provision of Section 12 only applied to structures and not to obstructions. In *Zubick* the court treated the Section 12 injunctive power and the provisions of Section 19, giving the Government the right to remove sunken vessels, as an election. And since the Government chose to raise the vessel, its rights were limited to the vessel itself or to the proceeds from the sale of such vessel.

Three cases, *United States v. Bethlehem*, 235 F. Supp. 569 (D.C. Md. 1964); *United States v. Perma Paving Co.*,

332 F.2d 754 (2 Cir. 1964); *United States v. Republic Steel Corp.*, 362 U.S. 482, 80 S.Ct. 884, 4 L.ed.2d 903 (1960), although not dealing with the problem of sunken vessels, shed light on whether the Section 12 injunction is properly applicable to obstructions. In *Bethlehem* the defendant deliberately grounded a floating drydock in navigable waters. The court held that the drydock was not a vessel, but an obstruction under Section 10, and thereby granted an injunction for its removal. In *Perma* the defendant put excessive weight on his property causing silt to move into the bed of a stream causing obstruction to navigation. The Government sought reimbursement for dredging the channel. The court recognized the application of the injunction power and concluded that there was no basis for reading the statute narrowly; and since the Government could have [fol. 214] compelled *Perma* to remove the silt, the Government could seek reimbursement for its dredging operations. In *Republic Steel* the Government sought to compel the removal of deposits. The Supreme Court held there to be an obstruction and granted an injunction not by Section 12 but solely under Section 10. The prohibition of an act carried with it the inherent power to enjoin the act.

These cases not only demonstrate an approach far from uniform but illustrate the myriad interpretations of the statutes in question. Faced with this array of diversified opinion we are necessarily thrown back to the legislative history and the wording of the statutes themselves, which leads us to conclude that those cases finding a vessel an obstruction under Section 10 and thus subject to the injunction power of Section 12 are to be given the greatest weight.

Our reading of the statute is identical with an administrative interpretation¹³ adopted by the Army Corps of Engineers which provides in part:

“ . . . a person who wilfully or negligently permits a vessel to sink in navigable water of the United States

¹³ 33 C.F.R. 209.410 (1962), first published at 11 Fed. Reg. 177 A-828 (1946).

may not relieve himself from all liability by merely abandoning the wreck. He may be found guilty of a misdemeanor and punished by fine, imprisonment, or both, and in addition may have his license revoked or [fol. 215] suspended. He may also be compelled to remove the wreck as a public nuisance or pay for its removal."

This is not "an authorized effort to administratively improve the statute"¹⁴ but a clear and precise statement of what the statute actually says.

Appellees point out that Congress must think it is required to raise vessels from navigable waters for it appropriates funds for "removing sunken vessels or craft obstructing or endangering navigation." 31 U.S.C. 725 a (b) (14). This is certainly no support for the right of an owner to abandon his vessel with impunity because the Government must always bear removal costs of innocent owners; and also the Government might wish to remove a negligently or wilfully sunk vessel instead of enforcing the injunctive process. No doubt there have been cases in the past, and most likely others will arise in the future, when removal by the Government would be the preferred remedy in order to avoid the delays inherent in litigation seeking an injunction. In such a situation the Government would need appropriations for the removal even though it could get reimbursed.

Therefore, we believe the correct reading of the statute allows only an innocent owner to abandon his ship and that a negligent party must raise the vessel or pay for its removal. Although appellees point out that a decision imposing liability on them catches them unprepared for such an occurrence, such an argument seems inappropriate as a means of avoiding the consequences of one's negligence.

A vast inland waterway such as we have under consideration here, the Mississippi River, is a national high-

¹⁴ The Texmar at 520.

way in which all of the people have an interest.¹⁵ It is a national asset. Such streams rarely, if ever, come to us in useful form in their natural state when measured by the standards and requirements of present day commerce. Precisely for this reason the national Government, and in many cases state and local governments as well, have spent vast sums in successful research and efforts to improve, prepare and maintain them as natural resources. The national character of this natural resource gives the Government an essential federal interest in it as a national artery of commerce.

It is not reasonable, we conclude, for the national Government to go to such trouble and expense to prepare, preserve and maintain this river, allow its use to be impaired seriously by those who use it most, and then permit such users to insulate themselves from liability for proved negligence. Moreover, our interpretation of the statute is not unusual in view of the wide-spread national interest in its subject matter. For example, in dealing with anti-trust legislation involving statutes of remarkable brevity [fol. 217] but of wide-spread application, Chief Justice Hughes stated that the Sherman Antitrust Act, "as a charter of freedom, * * * has a generality and adaptability comparable to that found to be desirable in constitutional provisions. * * * The restrictions the Act imposes are not mechanical or artificial. Its general phrases, interpreted to attain its fundamental objects, set up the essential standard of reasonableness." *Appalachian Coals, Inc. v. United States*, 288 U.S. 344, 359-360 (1933). See also *Standard Oil Co. of New Jersey v. United States*, 221 U.S. 1 (1911); Report of the Attorney General's National Committee to Study the Antitrust Laws (1955), p. 5 et seq.

While it is true that the statutes under consideration could have been drafted with greater clarity and more de-

¹⁵ See, for example, 33 U.S.C. § 10:

"All the navigable rivers and waters in the former territories of Orleans and Louisiana shall be and forever remain public highways."

tail, it is clear to us that the Congressional intent underlying the Rivers and Harbors Act to prevent interferences with and obstructions to navigable streams is so compelling and fundamental as to require the inference that appropriate civil remedies may be applied to those responsible for such interferences and obstructions. See *United States v. Republic Steel, supra*.

Nor do we consider the reasoning which we have applied to be at variance with fundamental concepts of the law of negligence. In 1897 Mr. Justice Holmes stated:

"I think that the law regards the infliction of temporal damage by a responsible person as actionable, if under [fol. 218] the circumstances known to him the danger of his act is manifest according to common experience, or according to his own experience if it is more than common, except in cases where upon special grounds of policy the law refuses to protect the plaintiff or grants a privilege to the defendant."

"The Path of the Law" (address delivered in 1897); reprinted in "Jurisprudence in Action", p. 276; "A Treasury of Legal Quotations" (Cook 1961), p. 131. In the circumstances of this case the inherent, imminent and impending danger of the presence of 2,220,000 pounds of deadly chlorine gas in the channel of the Mississippi River, and the obstruction resulting from the presence of the sunken barges L 1 and M 65, were certainly and positively clear to these appellees who were engaged in the "more than common experience" of using the river. We are unable to find any special grounds of policy upon which to refuse relief to the Government or to grant a special privilege or exemption to the defendants if it is proved that their negligence caused the sinking of the barges.

Since appellees liability stems from their allegedly negligent acts regarding the sinking of the various vessels, it must be determined whether the alleged acts constituted negligence on the part of any of the defendants. If the de-

defendants in the *Cargill* case are found to be negligent, the court should order the defendant to raise the barges, M 65 [fol. 219] and L 1, from the navigable waters of the Mississippi River or bear the reasonable cost of their removal. If negligence is found on the part of the defendants in *Wychem*, the damages to which the Government is entitled are those reasonably flowing from appellee's negligence and subsequent failure to raise the vessel. Since the Government properly could have demanded the removal, the cost of removal by the Government is to be given consideration in fixing damages but is not conclusive.

Since we have properly found liability under the Act, it is not necessary to deal with the contentions of the appellant that under the federal common law the appellees are liable for the abatement of a public nuisance.

Judgment reversed and the cases are remanded for a determination of whether the acts of the various defendants constituted negligence.

Reversed and Remanded.

[fol. 221]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

October Term, 1965

No. 22148

D. C. Docket No. 667 and 668—Admiralty

UNITED STATES OF AMERICA, Appellant,

versus

CARGILL, INC., et al., Appellees.

UNITED STATES OF AMERICA, Appellant,

versus

2,200,000 POUNDS CHLORINE CARGO EX BARGE WYCHEM 112
AND CONTAINERS IN REM AND UNION CARBIDE CORP., et al.,
IN PERSONAM, Appellees.APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF LOUISIANABefore Rives and Gewin, Circuit Judges, and Allgood,
District Judge.

JUDGMENT—July 13, 1966

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby remanded to the said District Court for a determination of whether the acts of the various defendants constituted negligence.

Issued as Mandate:

[fol. 222]

[File-endorsement omitted]

[fol. 225]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 22,148

[Title omitted]

PETITION FOR REHEARING EN BANC—Filed August 2, 1966

Wyandotte Transportation Company, Union Barge Line Corporation, Cargill, Inc., Cargo Carriers, Inc., Inland Rivers Transportation Co., Jeffersonville Boat & Machine [fol. 226] Co., Continental Insurance Co. and Travelers Insurance Co., appellees, through their undersigned attorneys, petition the Court for a rehearing *en banc* of its opinion dated July 13, 1966, reversing and remanding the judgment of the District Court for the following reasons:

(1) The issue decided by this Court is unusually important to the public in general, and in particular to the maritime industry, in that it creates a wholly new area of liability with large monetary exposures.

(2) The opinion of the Court is conflict with the opinion of the Court of Appeals for the Second Circuit in *United States vs. Wilson* (1956) 235 F. 2d 251 which holds that the removal of a sunken vessel may not be enforced pursuant to injunctive process under § 12 of the Rivers & Harbors Act of 1899, and with the opinions of the Third Circuit in *The Manhattan* (1935) 85 F. 2d 427 and *United States vs. Zubik* (1961) 295 F. 2d 53 and the opinion of the Ninth Circuit in *The Texmar* (1963) 319 F. 2d 512 all of which hold that the Government has no *in personam* right to recover removal expenses.

(3) The Court failed to consider whether the funds expended by the Government to raise WYCHEM 112 under the Disaster Relief Act, 42 U.S.C.A. § 1885 *et seq.* are recoverable from appellees.

Petitioners request that they be afforded the opportunity of oral argument should this petition be granted.

Petitioners append hereto a brief in support of this petition.

Wherefore, petitioners pray that they be granted a rehearing *en banc*; that this Court's opinion of July 13, [fol. 227] 1966 be recalled and set aside; and that the judgment of the District Court be affirmed.

McCreary, Hinslea & Ray, 860 Union Commerce Building, Cleveland, Ohio;

Terriberry, Rault, Carroll, Yancey & Farrell, 825 Whitney Bank Building, New Orleans, Louisiana,

By: Benjamin Yancey;
Attorneys for Wyandotte Transportation Company.

Lemle & Kelleher, 1836 National Bank of Commerce Building, New Orleans, Louisiana, By: Geo. B. Matthews, Attorneys for Union Barge Line Corporation.

Taylor, Porter, Brooks, Fuller & Phillips, Louisiana National Bank Building, Baton Rouge, Louisiana;

Phelps, Dunbar, Marks, Claverie & Sims, 420 Hibernia Bank Building, New Orleans, Louisiana,
By: J. Barbee Winston;

Attorneys for Cargill, Inc., Cargo Carriers, Inc., Inland Rivers Transportation Co., Jeffersonville Boat & Machine Co., Continental Insurance Co. and Travelers Insurance Co.

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Certificate

The undersigned attorneys for petitioners do hereby certify that the foregoing petition is presented in good faith and not for delay, and that copies of the petition and brief in support thereof have been served on Louis A. LaCour, Esq., United States Attorney, Alan S. Rosenthal, Esq. and Martin Jacobs, Esq., attorneys, Department of Justice, Washington, D. C. and on Messrs. Jones, Walker, Waechter, Poitevent, Carrere & Denegre, 225 Baronne Street, New Orleans, Louisiana, attorneys for Union Carbide Corporation, by depositing same in the United States mail, postage prepaid, addressed to them at their respective offices.

New Orleans, Louisiana, August , 1966.

Benjamin Yancey, Attorney for Wyandotte Transportation Company.

Geo. B. Matthews, Attorney for Union Barge Line Corporation.

J. Barbee Winston, Attorney for Cargill, Inc., Cargo Carriers, Inc., Inland Rivers Transportation Co., Jeffersonville Boat & Machine Co., Continental Insurance Co. and Travelers Insurance Co.

[fol. 242]

IN THE UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

No. 22,148

[Title omitted]

PETITION FOR REHEARING EN BANC—Filed August 2, 1966

[fol. 243] To the Honorable, the Judges of the United States Court of Appeals for the Fifth Circuit:

Union Carbide, one of the appellees herein, respectfully petitions for rehearing en banc pursuant to Rule 25(a) and submits to the Court and maintains that the decision of this Court dated July 13, 1966 is in error under the facts and the law and the opinion decides an unusually important and novel question contrary to the uniformity of jurisprudence which, contrary to the view of this Court has held that where an owner of a sunken vessel abandons her in accordance with the provisions of the *wreck* statute there is no liability by reason of such abandonment other than the forfeiture of the sunken and abandoned vessel and her cargo even though and notwithstanding that other liability has been alleged and asserted to the Court on the ground that the sinking of such vessel was due to negligence at or prior to the time of such sinking by one, more or all of the owners of such sunken vessel and those in charge, care, custody and control of her at or prior to the time of her sinking. However, even under the view of this Court, Union Carbide shows that neither the government nor any other party in this case has alleged that Union Carbide was in any manner whatsoever negligent and the factual affidavit of Union Carbide remains un-

[fol. 241]

[File endorsement omitted]

answered and unquestioned in this record. Union Carbide respectfully submits and maintains: (a) that the District Court was correct in granting Union Carbide's motion for summary judgment, certainly as to it, because there is no [fol. 244] triable issue of fact with respect to Union Carbide (all facts contained in the record before this Court conclusively establish that Union Carbide was not and could not be found to be negligent in any way whatsoever) and (b) that the record is more than adequate in respect to the position of Union Carbide in this matter to support not only a grant by the District Court and this Honorable Court of Appeals of its motion for summary judgment but also to support a grant by both the District Court and this Honorable Court of Appeals of Union Carbide's separate and distinct motion to dismiss the libel for failure to state a cause of action against Union Carbide.

Accordingly, Union Carbide requests that this Court order a rehearing en banc in this case and that the judgment of the District Court in its favor should be affirmed either or both on the motion of Union Carbide for summary judgment or its motion for dismissal on the failure of the libelant to state a cause of action against Union Carbide.

Union Carbide respectfully requests that this Honorable Court grant an opportunity for oral argument in this matter to the Court en banc.

George Denegre and Robert B. Acomb, Jr. of Jones, Walker, Waechter, Poitevent, Carrere & Denegre, 225 Baronne Street, New Orleans, Louisiana, Attorneys for Union Carbide Corporation.

[fol. 245]

Certificate

I certify that the foregoing petition is filed in good faith and not for the purpose of delay.

Robert B. Acomb, Jr.

[fol. 256]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 22148

UNITED STATES OF AMERICA, Appellant,
versus
CARGILL, INC., ET AL., Appellees

UNITED STATES OF AMERICA, Appellant,
versus

2,220,000 POUNDS CHLORINE CARGO EX BARGE WYCHEM 112
AND CONTAINERS, IN REM AND UNION CARBIDE CORP.,
ET AL., IN PERSONAM, Appellees.

Appeals from the United States District Court for the
Eastern District of Louisiana.

OPINION ON PETITION FOR REHEARING—September 12, 1966
[fol. 257] Before Rives and Gewin, Circuit Judges, and
Allgood, District Judge.

Per Curiam: Upon consideration of the petition for rehearing by Union Carbide Corporation, we conclude that there are no allegations or proof of negligence on the part of Union Carbide Corporation and that the summary judgment of the District Court in its favor ordering dismissal of the libel against it should be and the same hereby is Affirmed. The opinion, judgment and mandate of this Court are hereby modified and amended in accordance with this order.

It is further Ordered that the petition for rehearing by all of the other parties in said cause be, and the same is hereby Denied.

[fol. 258]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1965

No. 22148

D. C. Docket Nos. 667 and 668—Admiralty
UNITED STATES OF AMERICA, Appellant,

versus

CARGILL, INC., ET AL., Appellees.

UNITED STATES OF AMERICA, Appellant,

versus

2,200,000 POUNDS CHLORINE CARGO EX BARGE WYCHEM 112
AND CONTAINERS IN REM AND UNION CARBIDE CORP.,
ET AL., IN PERSONAM, Appellees.

Appeals from the United States District Court for the
Eastern District of Louisiana.

Before Rives and Gewin, Circuit Judges, and Allgood,
District Judge.

JUDGMENT—September 12, 1966

This cause came on to be heard on the Petitions for
Rehearing filed on August 2, 1966;

On Consideration Whereof, It is now here ordered and
adjudged that the opinion, judgment and mandate of this
Court are hereby modified and amended in accordance with
this Court's opinion on rehearing; and that the judgment
of the said District Court ordering dismissal of the libel

against appellee, Union Carbide Corp., is hereby, affirmed.
Issued as Mandate:

[fol. 259] Clerk's Certificate to foregoing transcript
(omitted in printing).

[fol. 260]

SUPREME COURT OF THE UNITED STATES

No. 838—October Term, 1966

WYANDOTTE TRANSPORTATION COMPANY, ET AL., Petitioners,

v.

UNITED STATES.

ORDER ALLOWING CERTIORARI—February 13, 1967

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

